

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

05/08/01

Case Number: 03-C-95-004750 AA
Date Filed: 06/01/1995
Status: Closed/Active
Reference Number: 95-65-sph
Judge Assigned: To Be Assigned,

Petition Of Peoples Counsel For Baltimore County

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
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Reference Number	95-65-sph C9504750

INVOLVED PARTIES

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
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PLT 001	Peoples Counsel For Baltimore County		CT DO 03/04/96	06/01/95
	Attorney: 0005744 Demilio, Carole		Removed: 06/01/95	06/01/95
	0005744 Demilio, Carole			06/01/95
	206 Washington Avenue			
	Towson, MD 21204			
	(410)825-6963			
	0029075 Zimmerman, Peter M			06/01/95
	People's Counsel For Baltimore County			
	Room 47 Courthouse			
	400 Washington Ave			
	Towson, MD 21204			
	(410)887-2188			

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
ITP 001	Maryland Line Property Attorney: 0017486 Williams, Newton A Nolan, Plumhoff & Williams, Chartered 502 Washington Avenue Suite 700 Towson, MD 21204-5340 (410)823-7800		CT DO 03/04/96 06/01/95	06/01/95
DEF 001	Baltimore County Board Of Appeals		CT DO 03/04/96	06/01/95
DEF 002	Maryland Line Area Association Inc Attorney: 0012186 Holzer, J Carroll Holzer And Lee The 508 Building 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961		CT DO 03/04/96 06/01/95	06/01/95
DEF 003	Mcquaid, Richard, Dr Attorney 0012186 Holzer, J Carroll Holzer And Lee The 508 Building 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961		CT DO 03/04/96 06/01/95	06/01/95

CALENDAR EVENTS

Date	Time	Dur	Cer	Evt	Lvl	Atty	Jdg	Day	Of	Rslt	By	ResultDt	Jdg	T	Notice	Rec	User ID
02/01/96	09:30A	03H	yes	CIVI			TBA	01	/01	CON	C	03/04/96	P	12/13/95		JD	PH

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign	Date	Removal	RSN
TBA To Be Assigned,	J		06/01/95		

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0001000	Petition for Judicial Review petition of people's counsel for baltimore county, for judicial	06/01/95	06/01/95	000	TBA		03/04/96	JMG PH

review of the decision of the county board of appeals of baltimore county, in the case of; in the matter of the application of maryland line srea assoc., inc. and dr. richard mcquaid for a special hearing on property located on the north side of york side of york rd, 300 +/- northwest of turner crossing road (21405-425 cold bottom rd) (shelly retail center) 7th Election district 3rd councilmanic district, in the baltimore county board of appeals, case no.. 95-65-sph

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0002000	Petition for Judicial Review jc 2 Petition of Maryland Line Area Association and Dr. Richard McQuaid.	06/05/95	06/19/95	DEF002	TBA	03/04/96	GC PH
0002001	Answer jg #4 fd.rec'd 6/30/95.	07/12/95	07/12/95	DEF002	TBA	03/04/96	JMG PH
0003000	Certificate of Notice 1g#3	06/28/95	06/28/95	000	TBA	03/04/96	LG PH
0004000	Transcript of Record from Adm Agency *df (5) fd. (Filed 8/7/95).	08/08/95	08/08/95	000	TBA	03/04/96	DFF PH
0005000	Notice - Recpt of Record of Proceedings *df (6) fd. Copies Sent. (Filed 8/7/95).	08/08/95	08/08/95	000	TBA	03/04/96	DFF PH
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0017000	DOCKET ENTRIES AND ORDER SENT TO BOA	cb	03/19/96	03/19/96	000	TBA	PH PH

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By: PLT 001 Peoples Counsel For Baltimore								
001	BOX	321	0	RETURNED				C

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	0005744 Demilio, Carole 206 Washington Avenue Towson, MD 21204 (410)825-6963			06/01/95
	0029075 Zimmerman, Peter M People's Counsel For Baltimore County Room 47 Courthouse 400 Washington Ave Towson, MD 21204 (410)887-2188			06/01/95

FEDERAL RECORDS SECTION - NOTIFICATION FROM CLERK
 COUNTY BOARD OF APPEALS
 01 MAY -8 AM 11:32
 FILE CLOSED - RECORD TO PDM

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
ITP 001	Maryland Line Property		CT DO 03/04/96	06/01/95
	Attorney 0017486 Williams, Newton A		06/01/95	
	Nolan, Plumhoff & Williams, Chartered			
	502 Washington Avenue			
	Suite 700			
	Towson, MD 21204-5340			
	(410)823-7800			
DEF 001	Baltimore County Board Of Appeals		CT DO 03/04/96	06/01/95
DEF 002	Maryland Line Area Association Inc		CT DO 03/04/96	06/01/95
	Attorney 0012186 Holzer, J Carroll		06/01/95	
	Holzer And Lee			
	The 508 Building			
	508 Fairmount Avenue			
	Towson, MD 21286-5448			
	(410)825-6961			
DEF 003	Mcquaid, Richard, Dr		CT DO 03/04/96	06/01/95
	Attorney: 0012186 Holzer, J Carroll		06/01/95	
	Holzer And Lee			
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	508 Fairmount Avenue			
	Towson, MD 21286-5448			
	(410)825-6961			

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Offered By: PLT 001 Peoples Counsel For Baltimore
001 BOX 321 0 EXHIBITS C

CIRCUIT COURT FOR BALTIMORE COUNTY
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Clerk of the Circuit Court
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PLT 001	Peoples Counsel For Baltimore County Attorney: 0005744 Demilio, Carole	CT DO 03/04/96 06/01/95 Removed: 06/01/95
	0005744 Demilio, Carole Room 47, Courthouse 400 Washington Avenue Towson, MD 21204 (410)887-2188	
	0029075 Zimmerman, Peter M Unverified Address Suite 204 606 Baltimore Ave. Baltimore, MD 21204 (410)296-2424	
ITP 001	Maryland Line Property Attorney: 0017486 Williams, Newton A Nolan, Plumhoff & Williams, Chartered Court Towers, Suite 700 210 W Pennsylvania Ave. Towson, MD 21204-5340 (410)823-7800	CT DO 03/04/96 06/01/95
DEF 001	Baltimore County Board Of Appeals Towson, MD 21285-6754	CT DO 03/04/96 06/01/95

True Copy Test
SUZANNE MENSCH, Clerk
Per Camelya Buford
Assistant Clerk

Type Num Name(Last,First,Mid,Title) / Dispo Entered

DEF 002 Maryland Line Area Association Inc CT DO 03/04/96 06/01/95
 Attorney: 0012186 Holzer, J Carroll
 Holzer And Lee
 305 Washington Ave
 Suite 502
 Towson, MD 21204
 (410)825-6961

DEF 003 Mcquaid, Richard, Dr CT DO 03/04/96 06/01/95
 Attorney: 0012186 Holzer, J Carroll
 Holzer And Lee
 305 Washington Ave
 Suite 502
 Towson, MD 21204
 (410)825-6961

CALENDAR EVENTS

Date Time Dur Cer Evnt Jdg L Day Of Rslt By ResultDt Jdg T Notice Rec

02/01/96 09:30A 003 yes CIVI TBA 01 /01 CON C 03/04/96 P 12/13/95

JUDGE HISTORY

JUDGE ASSIGNED Type Assign Date Removal RSN

TBA To Be Assigned, J 06/01/95

DOCUMENT TRACKING

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001000 Petition for Judicial Review 06/01/95 TBA 000 M 03/04/96 JMG PH
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002001	Answer jg #4 fd.rec'd 6/30/95.	07/12/95			TBA	DEF002		M 03/04/96	JMG PH
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006000	Notice - Recpt of Record of Proceedings	08/08/95	08/08/95		TBA	PLT001	08/08/95	M 08/08/95	DFP DFP
007000	Notice - Recpt of Record of Proceedings	08/08/95	08/08/95		TBA	ITP001	08/08/95	M 08/08/95	DFP DFP
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Offered By: PLT 001 Peoples Counsel For Baltimore

001 BOX 321 0 EXHIBITS C

03-C-95-004750

Date: 03/19/96

Time: 13:09

Page: 4

3-1-96

PETITION OF PEOPLES COUNSEL
FOR BALTIMORE COUNTY

*

IN THE CIRCUIT COURT

FOR JUDICIAL REVIEW OF
THE DECISION OF THE COUNTY
BOARD OF APPEALS OF
BALTIMORE COUNT

*

FOR BALTIMORE COUNTY

IN THE MATTER OF:
APPLICATION OF MARYLAND
LINE AREA ASSOCIATION

*

Case No. 95CV-4750

* * * * *

MEMORANDUM OPINION AND ORDER

This is an appeal by the Maryland Line Area Association and Dr. Richard McQuaid (Maryland Line) from a decision of the County Board of Appeals which denied their Petition for Special Hearing and affirmed the use by the Shelley Retail Center (Shelley) of a ten foot drainage easement located on the property at 1033 Cold Bottom Road.

True Copy Test

SUZANNE MENSCH, Clerk

Camelya Buford

Per

Assistant Clerk

Maryland Line is a very old rural community located on York Road in northern Baltimore County. The property at issue is located in the village of Maryland Line at 21405-415 York Road and is owned by Shelley. It consists of 1.1 acres and is zoned B.M.-C.R. Shelley seeks to construct a small shopping center on this property to be known as the Shelley Retail Center. The property is adjacent to 1033 Cold Bottom Road, which is zoned R.C.5.

BT

THE ISSUE

The issue presented by this appeal is narrow and straight forward and as framed by Shelley is:

"Whether an [underground conduit] leading from an underground, storm water management facility located entirely on the [Shelley Property]. . . is a permitted use in the R.C.5. Zone?"

The Board of Appeals held the underground conduit was a permitted use. For the reasons set out below, this Court will affirm that decision.

[T]he order of an administrative agency must be upheld on judicial review, if it is not based on error of law, and if the agency's conclusion reasonably may be based upon the fact proven. But a reviewing court is under no constraints in reversing an administrative decision which is premised solely upon an erroneous conclusion of law.
People's Counsel v. Maryland Marine 316 Md. 491, 496-97 (1989).

If there is substantial evidence, that is to say relevant evidence, that a reasonable mind might accept as adequate to support the conclusion of the administrative body, this Court must accept it and may not substitute its judgment for the expertise of those persons who constitute the administrative agency from which the appeal is taken. Bernstein v. Real Estate Commission, 21 Md. 221 (1959); Younkers v. Prince George's County, 333 Md. 14 (1993).

As noted above, the property consists of 1.1 acres. Shelley had previously received approval to construct a 6,300 square foot one story building with an adjacent parking area and

a storm water management area. It is important to note that the storm water management system is entirely on the subject property. To accommodate the orderly discharge of water from the storm water management area, Shelley sought to use a 10 foot easement given to it by Cold Bottom Farm, Inc., the owner of the adjacent property. For storm water management purposes, Shelley planned to bury a fifteen inch pipe in the easement that would run approximately 450 feet to an existing drainage culvert near Interstate 83.

Among the permitted uses as a matter of right in a R.C.5. Zone, . are the following: "telephone, telegraph, electric power, or other similar lines or cables - all underground; underground gas, water or sewer mains or storm drains; other underground conduits except underground interstate and intercontinental pipe lines." Sec. 1A04.2A.9. Baltimore County Zoning Regulations (1987ed).

The Maryland Line Appellants mount a two pronged attack. First, they argue that "other underground conduits" means conduits created for public use, not for private or commercial use. Second, they argue that even if Cold Bottom Farm could construct the conduit for its use, it must be exclusive. To allow Shelley to avail himself of the conduit's use would be to permit a commercial use in a R.C.5. Zone, which is prohibited by the Baltimore County Zoning Regulations.

To support their first contention, Appellants called as a witness Paul J. Solomon, a former head of the County's Environmental Planning Section. He testified, in broad terms,

about the evolution of the R.C. zones and his participation in their development. He opined, without objection, that the use by Shelley of the conduit would be an extension of a commercial use on R.C.5. zoned land (Ts47) and that the phrase "other underground conduits" in Sec. 1A04.2 Sec. 9 was intended for public use, not private use. (Ts52ff.)

It is not clear under what authority Mr. Solomon was permitted to express an opinion concerning the meaning and intent of this county ordinance. The meaning and intent are to be gleaned from the language of the legislators: "[L]aws are made for men of ordinary understanding and should therefore be construed by the ordinary rules of common sense. Their meaning is not to be sought for in metaphysical subtleties, which may make anything mean everything or nothing at pleasure." Lt. to William Johnson from Thomas Jefferson June 22, 1823 quoted in Gnou v. Seidel 25 Md. App. 16, 23-24 (1975).

Here, had the county council intended "other underground conduit" to mean "other underground public conduits" it would have said so. It did not.

The Board's finding that an underground conduit on R.C.5. zoned lands is a permitted use as a matter of right is at a minimum fairly debatable. See Board v. Meltzer, 239 Md. 144 (1964).

Next, the Court must address Appellant's second argument-- that to permit Shelley to use the conduit would be to permit a commercial use in the R.C.5. Zone, something they contend is clearly prohibited.

To support their argument, Appellants cite a number of cases, including: Leimbach Constr. Co. v. Mayor and City Council of Baltimore 257 Md. 635 (1970) (installation of a driveway and culvert across residentially zoned property as a means of access to commercial property was a "business use" prohibited by Baltimore City zoning ordinances); Diem v. Balto. Gas & Electric Co., 240 Md. 317 (1965) (public utility company granted special exception to construct above ground high voltage lines in rural area because utility poles were not "manufacturing structures" from which residential areas were to be protected); Maurer v. Snyder, 199 Md. 551 (1951) ("home occupation" within meaning of county zoning act was not established where waterman who sold most of his catch on wholesale market sold a small part of his catch at home). All cases cited by Appellants to support their argument are factually inapposite.

"Use" is not defined in the Baltimore County Zoning Regulations. For good reason, the Board did not directly address this issue. Because it concluded that Cold Bottom could construct the conduit as a matter of right, there was nothing in the zoning regulations which would prohibit Shelley from using it.

By way of analogy, it could scarcely be argued that had telephone poles and lines been constructed on the Cold Bottom property, Shelley's phone could not be hooked up to these lines because such a hook up would constitute a "commercial" use of the property. The "conduit" is permitted as a matter of right.

The discharge of already "managed" water into it does not amount to a prohibited commercial use.

Accordingly, it is this 1st day of March 1996 by the Circuit Court for Baltimore County

ORDERED that the underground conduit for storm water management to be used by Shelley is a permitted use in the R.C. 5 zoned land. The decision by the Board of Appeals is AFFIRMED.

Maris Byrnes
JUDGE

*Olene
Hobbs
- 2nd copy*

8 1 9

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL FOR
FOR BALTIMORE COUNTY
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204

IN THE CASE OF: IN THE MATTER OF
MARYLAND LINE AREA ASSOCIATION, INC.
AND DR. RICHARD MCQUAID
FOR A SPECIAL HEARING ON PROPERTY
LOCATED ON THE NORTH SIDE OF YORK
ROAD, 300' +/- NORTHWEST OF TURNER
CROSSING ROAD (21405-415 COLD BOTTOM
ROAD) (SHELLEY RETAIL CENTER)
7TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
CASE NO. 95-65-SPH

CIVIL
ACTION
No. C-95-004750

* * * * *

PROCEEDINGS BEFORE THE ZONING COMMISSIONER
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Kristine K. Howanski and S. Diane Levero,
constituting the County Board of Appeals of Baltimore County, and
in answer to the Petition for Judicial Review directed against them
in this case, herewith return the record of proceedings had in the
above-entitled matter, consisting of the following certified copies
or original papers on file in the Office of Permits and Development
Management and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
OFFICE OF PERMITS AND DEVELOPMENT MANAGEMENT
OF BALTIMORE COUNTY

RECEIVED AND FILED

No. 95-65-SPH(0)

August 15, 1994
BALTIMORE COUNTY

Petition for Special Hearing to determine
whether the use of RC 5 zoned property for a
drainage easement to support commercial use is

permitted by law filed by J. Carroll Holzer, Esquire, on behalf of Maryland Line Area Association and Dr. Richard McQuaid, individually.

September 2 Publication in newspapers.

September 23 Certificate of Posting of property.

September 28 Hearing held on Petition by the Zoning Commissioner.

October 27 Order of the Zoning Commissioner in which Petition for Special Hearing was DENIED in part and GRANTED in part with one restriction.

November 23 Notice of Appeal filed by J. Carroll Holzer, Esquire, on behalf of the Maryland Line Area Association and Dr. Richard McQuaid, individually.

May 10, 1995 Hearing before the Board of Appeals.

May 18 Public Deliberation completed.

May 25 Opinion and Order of the Board in which the Petition for Special Hearing was DENIED; use is permitted.

June 1 Petition for Judicial Review filed in the Circuit Court for Baltimore County by People's Counsel for Baltimore County.

June 8 Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.

June 9 Certificate of Notice sent to interested parties.

August 7 Transcript of testimony filed.

Petitioner's Exhibits No. 1-Findings of Fact & Conclusions of Law 1/7/94
2-Decision of Zoning Commissioner 10/27/94
3-Rule 8 Authorization Papers
4-Photos [12] of subject property & its surroundings
5-Application for Building Permit
6-Zoning Commissioner's Decision - Long Green Pike

7-Revised comps; Letter of
permission to outfall; site
Drainage area map
8-Attendance List - Petitioners

People's Counsel Exhibits No. 1-Portion of road map showing
Maryland Line
2-Letter to Dr. & Mrs. McQuaid from
James Dieter 10/13/94
3-Sect. 102 of BCZR
4-Article 1A-Resource Conservation
zones
5-State Regulations: Article V,
Stormwater Management
6-Title 26 -Dept. of the Environment
Subtitle 09, Water Management
7-Long Green Zoning Case:
Legal Analysis
8-Long Green Valley Assn. Opinion
9-200' scale zoning map Sheet
NW-38-B

Joint Exhibit No. 1-Original Site Plan

August 7, 1995 Record of Proceedings filed in the Circuit
Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered
and upon which said Board acted are hereby forwarded to the Court,
together with exhibits entered into evidence before the Board.

Respectfully submitted,



Charlotte E. Radcliffe, Legal Secretary
County Board of Appeals of Baltimore
County, Room 49, Basement - Old Courthouse
400 Washington Avenue
Towson, MD 21204 (410) 887-3180

cc: People's Counsel for Baltimore County
J. Carroll Holzer, Esquire
Maryland Line Area Association, Inc.
and Dr. Richard McQuaid
Newton A. Williams, Esquire
Maryland Line Property, Inc.
Charles Ensor
Cold Bottom Farms, Inc.

69-91

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL FOR
FOR BALTIMORE COUNTY
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204

IN THE CASE OF: IN THE MATTER OF
MARYLAND LINE AREA ASSOCIATION, INC.
AND DR. RICHARD MCQUAID
FOR A SPECIAL HEARING ON PROPERTY
LOCATED ON THE NORTH SIDE OF YORK
ROAD, 300' +/- NORTHWEST OF TURNER
CROSSING ROAD (21405-415 COLD BOTTOM
ROAD) (SHELLEY RETAIL CENTER)
7TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
CASE NO. 95-65-SPH

* * * * *

CIVIL
ACTION
No. C-95-004750

RECEIVED AND FILED
95 JUN -9 AM 01:02
CLERK OF COURT

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Kristine K. Howanski and S. Diane Levero, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, Petitioners; Maryland Line Property, Inc., P.O. Box 356, Monkton, MD 21111; Newton A. Williams, Esquire, NOLAN, PLUMHOFF & WILLIAMS, 210 W. Pennsylvania Avenue, Suite 700, Towson, MD 21204, Counsel for Maryland Line Property, Inc. (Shelley Retail Center); Maryland Line Area Association, Inc. and Dr. Richard McQuaid, 1501 Harris Mill Road, Parkton, MD 21120; J. Carroll Holzer, Esquire, HOLZER AND LEE, 305 Washington Avenue, Suite 502, Towson, MD 21204, Counsel for Maryland Line Area Association, Inc.

and Dr. Richard McQuaid; a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

Charlotte E. Radcliffe

Charlotte E. Radcliffe, Legal Secretary
County Board of Appeals, Room 49 -Basement
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, Petitioners; Maryland Line Property, Inc., P.O. Box 356, Monkton, MD 21111; Newton A. Williams, Esquire, NOLAN, PLUMHOFF & WILLIAMS, 210 W. Pennsylvania Avenue, Suite 700, Towson, MD 21204, Counsel for Maryland Line Property, Inc. (Shelley Retail Center); Maryland Line Area Association, Inc. and Dr. Richard McQuaid, 1501 Harris Mill Road, Parkton, MD 21120; J. Carroll Holzer, Esquire, HOLZER AND LEE, 305 Washington Avenue, Suite 502, Towson, MD 21204, Counsel for Maryland Line Area Association, Inc. and Dr. Richard McQuaid, this 9th day of June, 1995.

Charlotte E. Radcliffe

Charlotte E. Radcliffe, Legal Secretary
County Board of Appeals, Room 49 -Basement
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

June 9, 1995

J. Carroll Holzer, P.A.
HOLZER and LEE
305 Washington Avenue, Suite 502
Towson, MD 21204

RE: Civil Action No. C-95-004750
MARYLAND LINE AREA ASSOCIATION, INC
AND DR. RICHARD MCQUAID

Dear Mr. Holzer:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on June 1, 1995, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. C-95-004750.

Enclosed is a copy of the Certificate of Notice, which has been filed in the Circuit Court.

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Maryland Line Area Assn., Inc.
and Dr. Richard McQuaid
Newton A. Williams, Esquire
Maryland Line Property, Inc.
Charles Ensor /Cold Bottom Farms, Inc.
David R. Snyder
Lawrence E. Schmidt /ZADM
Arnold Jablon /ZADM
Virginia W. Barnhart, County Attorney
Pat Keller /Planning
W. Carl Richards /ZADM
Docket Clerk /ZADM





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

June 9, 1995

Peter Max Zimmerman
People's Counsel for Baltimore County
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204

RE: Civil Action No. C-95-004750
MARYLAND LINE AREA ASSOCIATION, INC
AND DR. RICHARD MCQUAID

Dear Mr. Zimmerman:

In accordance with Rule 7-206(c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with Rule 7-206(c).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

A handwritten signature in cursive script that reads "Charlotte E. Radcliffe".

Charlotte E. Radcliffe
Legal Secretary

Enclosure



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31 day of May, 1995, a copy of the foregoing Petition for Judicial Review was mailed to Newton A. Williams, Esquire, Nolan, Plumhoff & Williams, 210 W. Pennsylvania Avenue, Suite 700, Towson, MD 21204, attorney for Maryland Line Property, Inc. (Shelley Retail Center) and to J. Carroll Holzer, Esquire, Holzer and Lee, 305 Washington Avenue, Suite 502, Towson, MD 21204, attorney for Maryland Line Area Association, Inc. and Dr. Richard McQuaid.


PETER MAX ZIMMERMAN

IN THE MATTER OF
THE APPLICATION OF
MARYLAND LINE AREA ASSOCIATION,
INC., AND DR. RICHARD McQUAID
FOR A SPECIAL HEARING ON
PROPERTY LOCATED ON THE NORTH
SIDE OF YORK ROAD, 300' +/-
NORTHWEST OF TURNER CROSSING
ROAD (21405-415 YORK ROAD AND
1033 COLD BOTTOM ROAD)
(SHELLEY RETAIL CENTER)
7TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 95-65-SPH
*
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* * * * *

O P I N I O N

This case comes before the Board on appeal from the decision of the Zoning Commissioner dated October 27, 1994, in which a Petition for Special Hearing filed by the Maryland Line Area Association, Inc., and Dr. Richard McQuaid was denied in part and granted in part.

Specifically, the Zoning Commissioner ordered that the property at 1033 Cold Bottom Road, owned by Cold Bottom Farms, Inc., can be used for a 10-foot non-exclusive drainage easement for the adjacent property at 21405-415 York Road, known as Shelley Retail Center. He denied the Petition in that the utilization of an R.C.5 easement on the Cold Bottom Farms tract to accept the aboveground discharge of water from the Shelley property via an underground pipe is a permitted use of land; and granted the Petition for additional consideration to be given, if necessary, as to an above-ground culvert or discharge system.

The Appellants were represented by J. Carroll Holzer, Esquire. Newton A. Williams, Esquire, represented Maryland Line Property, Inc., owner of the proposed Shelley Retail Center. Peter Max Zimmerman, People's Counsel for Baltimore County, also appeared.

Testimony and evidence presented revealed the following facts. The Shelley Retail Center property, which is zoned BM-CR, comprises approximately one acre, and is located in Maryland Line, the northernmost village to the Pennsylvania line in the county. The Owner wants to build a 6,300-square-foot building to be used as a retail center on the property. Because he will disturb more than 5,000 square feet, he is required to have a stormwater management system.

The Owner's proposed stormwater management plan utilizes a collection system that pipes the water into an infiltration pond; from there the water exits out a 15-inch pipe 450 feet long that

will be buried about 3 1/2 feet under the ground along a 10-foot easement on the Cold Bottom Farms property, which is zoned R.C. 5, to a discharge point adjacent to Interstate 83.

People's Counsel presented as a witness Paul J. Solomon, who headed the Environmental Planning Section, Office of Planning, in the 1970s and 1980s. Mr. Solomon testified that he was the planner in charge dealing with the development of the R.C. 5 regulations. He testified that the R.C. 5 zoning, enacted by the County Council in 1975, was an attempt to provide home sites in agricultural areas, but to encourage this development to occur in succinct areas, particularly around rural villages, rather than all over the land. He testified that allowing an R.C.-zoned area to accommodate an adjacent commercial use was never contemplated, and that he thought such an allowance would frustrate the intent and purpose of the R.C. zones by being, in effect, an expansion of the commercial use into the R.C. zones.

Mr. Solomon then referred to Section 1A04.2.A.9, which lists uses permitted as of right in R.C. 5 zones, as including "telephone, telegraph, electrical-power, or other similar lines or cables -- all underground; underground gas, water, or sewer mains or storm drains; other underground conduits except underground interstate and intercontinental pipe lines." ✓

Mr. Solomon testified that the intent of Paragraph 9 was to permit public uses, such as a community water system, or quasi-public uses, such as telephone lines; regarding underground conduits, the intent was to permit only conduits created for public use, not for private or commercial use.

Appellant Dr. Richard McQuaid, testifying as president of the Maryland Line Area Association and for himself, stated that the Association objects to stormwater management on R.C.5 land because it is a commercial use.

Dr. McQuaid testified that the runoff will run into a tributary of Harris Mill Creek, and that the tributary, which is a trout stream, runs on his property. He testified that the subject property will have polluted runoff from its parking lot and the roof of the retail center, which will interfere with surrounding agriculture.

People's Counsel cited Leimbach Construction v. City of Baltimore, 257 Md. 635

(1970), as a landmark Maryland case in which the Maryland Court of Appeals ruled that it is impermissible to place a commercial use, in this case a commercial access road, in a residential zone. He also cited the Long Green Valley Association case (currently on appeal), in which this Board found that the implemented use of adjacent R.C. 2-zoned property to support a septic system for commercially zoned property is illegal (People's Counsel Exhibit 8).

People's Counsel argued that, based on these two cases and others (People's Counsel Exhibit 7), unless it is explicitly permitted by the zoning law, it is impermissible to place in residential and agricultural zones roads, septic systems and similar private transportation or utility uses which serve adjacent or nearby commercial land use.

The Owner argued that the wording of Section 1A04.2.A.9 is very clear in permitting an underground conduit as a matter of right, and that if the County Council had wished to limit underground conduits to public conduits only, it would have said so, as it has specified "public" utility uses in other sections of the zoning regulations.

The Appellants and People's Counsel did not dispute the fact that the storm water management outfall system to be contained within the easement on the Cold Bottom Farms property is an underground conduit. They argued that it was never the intent of Section 1A04.2.A.9 to permit the extension of a commercial use, but only to permit public or quasi-public utility systems.

However, based on the evidence and testimony presented, this Board finds as a fact that the wording of Section 1A04.2.A.9 is quite clear, and that an underground conduit on R.C.5-zoned land is a permitted use as a matter of right.

ORDER

IT IS THEREFORE this 25th day of May, 1995, by the County Board of Appeals of Baltimore County

ORDERED that the *Petition for Special Hearing* be and is hereby **DENIED**; and that the property at 1033 Cold Bottom Road, zoned R.C. 5 and owned by Cold Bottom Farms, Inc., can be used for a 10-foot drainage easement for the property located adjacent thereto at 21405-415



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

May 25, 1995

J. Carroll Holzer, P.A.
HOLZER and LEE
305 Washington Avenue, Suite 502
Towson, MD 21204

RE: Case No. 95-65-SPH
Maryland Line Area Assn, Inc.
and Dr. Richard McQuaid -Petitioners

Dear Mr. Holzer:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules and Procedure. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Assistant

encl.

cc: Maryland Line Area Assn., Inc.
and Dr. Richard McQuaid
Newton A. Williams, Esquire
Maryland Line Property, Inc.
Charles Ensor /Cold Bottom Farms, Inc.
David R. Snyder
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director/ZADM
Virginia W. Barnhart, County Attorney



Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

October 27, 1994

J. Carroll Holzer, Esquire
305 Washington Avenue, Suite 502
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
NE/S York Road, 300'+/- NW of Turner Crossing Road
(21405-415 York Road and 1033 Cold Bottom Road)
7th Election District - 3rd Councilmanic District
Maryland Line Area Assoc., Inc. and Dr. Richard McQuaid - Petitioners
Case No. 95-65-SPH

Dear Mr. Holzer:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been denied in part and granted in part in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lawrence E. Schmidt", written in a cursive style.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Newton A. Williams, Esquire
Nolan, Plumhoff & Williams
210 West Pennsylvania Avenue, Suite 700, Towson, Md. 21204

People's Counsel

~~File~~



RE: PETITION FOR SPECIAL HEARING * BEFORE THE
 21405-415 York Road and 1033 Cold * ZONING COMMISSIONER
 Bottom Road, NES York Road, 300'+/- * OF BALTIMORE COUNTY
 NW of Turner Crossing Road, 7th *
 Election Dist., 3rd Councilmanic *
 Maryland Line Area Assoc., et al. * CASE NO. 95-65-SPH
 Petitioners *
 * * * * *

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
 People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
 Deputy People's Counsel
 Room 47, Courthouse
 400 Washington Avenue
 Towson, MD 21204
 (410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of September, 1994, a copy of the foregoing Entry of Appearance was mailed to J. Carroll Holzer, Esquire, 305 Washington Avenue, Suite 502, Towson, MD 21204, attorney for Petitioners, and to Newton Williams, Esquire, Nolan, Plumhoff & Williams, 210 W. Pennsylvania Avenue, Suite 700, Towson, MD 21204, attorney for Shelley Retail Center.

Peter Max Zimmerman
 PETER MAX ZIMMERMAN

EXHIBIT A

The Baltimore County Zoning Regulations, Section 1A04-RC-5 (Rural-Residential Zone). The following are specific sections and reasons for Petitioners believing that the BCZR are not being complied with when RC-5 zone property is being utilized to accommodate a drainage easement to support commercial development in a BM-CR zone:

1. Section 1A04.2.A, Uses Permitted as of Right, does not permit a stormwater management drainage easement, not accessory to a structure on an RC zone as a use permitted as of right.

2. Section 1A04.2.B, Uses Permitted by Special Exception, do not provide for uses being granted by special exception for stormwater management drainage easement, not accessory to an existing building in RC zone.

3. RC-5 zone does not permit utilization of such a zone for, and in support of, commercial operations; such use is, in fact, a violation of Section 1A00.1, the general provisions for all RC zoned property and is, in fact, in violation of the spirit and intent of such zones.

4. Such use is in violation of Section 1A00.2.A, B, C, and D.

5. Such approval by the County is in violation of Kawalski v. Lamarr, 25 Md. App. 493 (1975), where the Court, interpreting the Baltimore County Zoning Regulations stated, "Any use other than those permitted and being carried on as of right or by special exception is prohibited." Carroll County Commissioners v. Zen, 86 Md.App. 745 (1991), confirm that, "An accessory must be customarily incidental to the principle use, serving no other principle use" Here the stormwater management drainage easement is not accessory to any principle use on the RC-5 property, but serves the BM-CR commercial property known as Shelley Retail Center.

6. Such stormwater management drainage easement is not an appropriate accessory use to be permitted by Baltimore County.

7. Commercial uses are not generically allowed in density, residential, or resource conservation zones. BCZR 1B01, BCZR 1A01-1A04. The Shelley Retail Center, as described on Exhibit B, is specifically not allowed in the RC-5 or any other density, residential, or agricultural zones. Correlatively, there is not provision for the allowance of commercially connected stormwater management drainage easements.

8. The Court of Appeals has held that commercial uses, including those which otherwise arguably are accessory, such as road access and private beaches, are not allowed in a residential zone. Leimbach Construction Company v. City of Baltimore, 257 Md. 635 (1970); Delbrook Homes v. Mayers, 248 Md. 89 (1967); see Board of County Commissioners v. Snyder, 186 Md. 342 (1946).

9. The Court of Special Appeals has held that a septic field is an impermissible use in a residential-agricultural zone when it serves adjacent commercially zoned and used property, even under common ownership. G.L.P. Development Company v. Maryland National Capital P&P Commissioners, Court of Special Appeals, September Term, 1989. The main substantive issue in the G.L.P. Development case is similar to the present situation. The Connecticut Supreme Court held that a septic system is an impermissible use in a residential zone. Silitschanu v. Groesbeck, 543 A.2d. 734 (Connecticut, 1988).

10. Baltimore County has provided explicitly a use permit process for business or industrial parking in residential zones. BCZR 409.8B. But there is no allowance for any other commercial use of residential zones in combination with a commercial zone use.

11. The Zoning Commissioner of Baltimore County, in Case No. 93-93-SPH, has found that a waste disposal system supporting commercially zoned property on RC-2 land is a violation of the Baltimore County Zoning Regulations.

WHEREFORE, for all of the foregoing reasons, the Petitioners request the Zoning Commissioner to determine that the above is an impermissible use of the RC-5 property, located on 1033 Cold Bottom Road.

21405-415 YORK ROAD AND
1033 COLD BOTTOM ROAD

EASEMENT DESCRIPTION

From the western-most boundary of the Harrisburg Expressway, thence north 19 degrees 54 minutes 20 seconds west 971.53 feet to a point on the south side of Sparks Lane, 16.5 feet wide (now abandoned road).

S.S. (r)

DESCRIPTION
COLD BOTTOM FARMS, INC.

BEGINNING for the same at a pipe set at the southeast corner of the York Road (Md. Route 45), 66 feet wide and in the first line of the parcel of land secondly described in a Deed dated July 22, 1974 and recorded among the Land Records of Baltimore County in Liber E.H.K.Jr. No. 5478, folio 732, which was conveyed by W. McKinley Rosier, Personal Representative to William McKinley Rosier, said pipe being distant South 17 degrees 25 minutes east 186.07 feet measured along said first line from the beginning of said parcel of land, said place of beginning being also at the end of the first line of a parcel of land which by a Deed dated February 21, 1975 and recorded among the Land Records of Baltimore County in Liber E.H.K.Jr. No. 5509, folio 875, was conveyed by Edward C. Mackie, Personal Representative to Edward S. Thompson and wife, and running thence with and binding on a part of the first line of the first herein referred to parcel of land and binding on the east side of the York Road South 17 degrees 25 minutes east 60 feet to a pipe set at the beginning of a parcel of land which by a Deed dated March 13, 1975 and recorded among the Land Records of Baltimore County in Liber E.H.K.Jr. No. 5513, folio 838, was conveyed by Edward C. Mackie, Personal Representative to The Sparks State Bank, thence leaving said road and binding reversely on the outlines of said last mentioned parcel of land the four following lines viz: North 72 degrees 35 minutes east 197.00 feet to a pipe, South 17 degrees 25 minutes east 195 feet to a pipe, southeasterly by a line curving toward the right having a radius of 600 feet for a distance of 205 feet (the chord of said arc bearing south 55 degrees 14 minutes 17 seconds east 205.00 feet) to a pipe and south 45 degrees 27 minutes east 60.71 feet to a pipe set in the third line of the secondly described parcel of land in the aforesaid Deed from Rosier to Rosier, thence running with and binding on a part of said third line, north 77 degrees 05 minutes east 473.45 feet to the westernmost right-of-way line of the Baltimore-Harrisburg Expressway as shown on State Roads Commission of Maryland Plat No. 18197, thence binding on the westernmost right-of-way line of said expressway as shown on said plat, north 19 degrees 54 minutes 20 seconds west 971.53 feet to a point on the south side of Sparks Lane, 16.5 feet wide (now abandoned) and in the last line of the secondly described parcel of land in the aforesaid deed from Rosier to Rosier, thence running with and binding on a part of said last line and binding on the south side of Sparks Lane, south 53 degrees 00 minutes west 619.25 feet to a pipe set at the end of the third line of the aforesaid parcel of land which was conveyed by Mackie to Thompson and thence binding reversely on the third and second lines of said parcel of land the two following courses and distances viz: South 17 degrees 25 minutes east 256.16 feet to a pipe and south 72 degrees 35 minutes west 197.00 feet to the place of beginning. Containing 11.589 acres of land, more or less.

BEING the same lot or parcel of ground which by Deed dated January 2, 1979, and recorded among the Land Records of Baltimore County, in Liber E.H.K.Jr. No. 6108, folio 633, was granted and conveyed by Edward C. Mackie, Personal Represetnative of the Estate of William McKinley Rosier. For Last Will and Testament of William McKinley Rosier see Wills Liber J.L.D. No. 144, folio 619 recorded in the Register of Wills Office of Baltimore County.

wp\petitions\descrip.doc

DESCRIPTION
MARYLAND LINE PROPERTY, INC.

BEGINNING for the same at a pipe set at the southeast corner of the York Road (Md. Route 45), 66 feet wide and Sparks Lane, 16.50 feet wide (now abandoned) and at the beginning of the parcel of land secondly described in a deed dated July 22, 1974, and recorded among the Land Records of Baltimore County in Liber E.H.K.Jr. No. 5478, folio 732, which was conveyed by W. McKinley Rosier, Personal Representative, to William McKinley Rosier and running thence with and binding on a part of the first line of said secondly described parcel of land and binding on the east side of the York Road, South 17 degrees 25 minutes East 186.07 feet to a pipe, thence leaving said road and outline and running for lines of division, the two following courses and distances, viz: North 72 degrees 35 minutes East 197.00 feet to a pipe and North 17 degrees 25 minutes West 256.16 feet to a pipe set on the south side of Sparks Lane and in the last line of the aforesaid secondly described parcel of land and running thence with and binding on a part of said last line and binding on the south side of Sparks Lane (now abandoned), South 53 degrees 00 minutes West 209.10 feet to the place of beginning. CONTAINING 1.00 acre of land, more or less.

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Townson, Maryland

93-65-SPT

District 7th Date of Posting 9/9/94

Posted for: Special Hearing

Petitioner: Md. Inv. Property, Inc. & Md. Inv. Area Assoc. & Dr. R. McQuaid

Location of property: 21405 York Rd, N.E.S

Location of Signs: Facing roadway, on property being zoned

Remarks: _____

Posted by M. Steady Date of return: 9/16/94
Signature

Number of Signs: 1



5071.

94 DEC 30 01 2:31

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

95-65-SPH

District 7th

Date of Posting 12/27/99

Posted for: Appeal

Petitioner: Md. Home Property & Dr. Richard McQuaid

Location of property: 21405 York Rd, NE/S

Location of Signs: Facing road by property being appealed for zoning

Remarks: _____

Posted by M. J. Stealy
Signature

Date of return: 12/30/99

Number of Signs: 1



CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Townson, Maryland

95-65-SPH

District: 7th Date of Posting: RE 3/20/95
Posted for: Appeal
Petitioner: Md. Home Area Assoc., Inc.
Location of property: 21405-415 YORK RD.
Location of Signs: Facing roadway -
Received call from appeal, sign was down and hearing was
Remarks: This Thru. sign - Replenish sign
Posted by: M. Eason Date of return: 3/24/95
Signature
Number of Signs: 1

95-65-SPA

3/20/95

"SIGN HAS BEEN
DOWN FOR SOME
TIME"

MARY EASON
343-1961 (H)
455-2288 (W)

TIC TO WALT S. --
WILL DRIVE OUT TO
PLACE ANOTHER SIGN.

(NOTE HEARING IS THURS.
3/23 @ 10:00 am)

C. RADCLIFFE

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 108 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

Case Number:
95-85-SPH (Item 69)
21405-416 York Road and
1033 Cold Bottom Road
NE York Road, 300' +/-
NW of Turner Crossing Rd
7th Election District
3rd Councilmanic

Legal Owner(s):
Maryland Line Property,
Inc.

Petitioner(s):
Maryland Line Area
Association & Dr.
Richard McQuaid,
Individually.

HEARING: WEDNESDAY,
SEPTEMBER 28, 1994 at
9:00 a.m. in Rm. 108,
County Office Building.

Special Hearing: to de-
termine whether the use of
P.C.-8 zoned property for a
drainage easement to support
commercial use is permitted by
law.

LAWRENCE E. SCHMIDT,
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are Hand-
icapped accessible; for special
accommodations Please Call
887-3353.

(2) For informa-
tion concerning the File and/or
Hearing, Please Call 887-3391.

9/047 September 1.

CERTIFICATE OF PUBLICATION

TOWSON, MD., Sept. 2, 1994

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Sept. 1, 1994.

THE JEFFERSONIAN,

A. Henrickson

LEGAL AD. - TOWSON

BALTIMORE COUNTY, MARYLAND
OFFICE OF REVENUE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 15,977

DATE 11/28/94 ACCOUNT R-001-6150

AMOUNT \$ 210.00

RECEIVED J. Carroll Holzer, Esq.
FROM: Appeal of Special Hearing
21405-415 York Rd. and 1033 Cold Bottom Road
Sign

FOR: _____

CASHIER'S SIGNATURE
DATE

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER



Baltimore City
 Zoning Administration &
 Development Management
 111 West Chesapeake Avenue
 Towson, Maryland 21204

receipt

95-65-SPH

Account: R-001-6150

Number 63 (WCR)

Date 8/15/94

DROP-OFF --- NO REVIEW

#040 - SPECIAL HEARING ----- \$250.00
 #080 - SIGN POSTING ----- 35.00
 TOTAL ----- \$285.00

Legal Owner: Maryland Line Property, Inc.

Petitioners: Maryland Line Area Association & Dr. Richard McQuaid, Individually
 21405-415 York Road & 1033 Cold Bottom Road -- Shelley Retail Center

7th Election District

3rd Councilmanic District

Attorney: J. Carroll Holzer

1.13 acres B.M.-C.R. (subject site)
 .25 +/- acre R.C.-5 (easement)

DLADL#0512MICRRC

\$285.00

BA 002:45P#08-16-94

Please Make Checks Payable To: Baltimore County

TO: PUTUXENT PUBLISHING COMPANY
September 1, 1994 Issue - Jeffersonian

Please forward billing to:

J. Carroll Holzer, Esq.
305 Washington Avenue, Suite 502
Towson, Maryland 21204
825-6960

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 95-65-SPH (Item 63)
21405-415 York Road and 1033 Cold Bottom Road
NES York Road, 300'+/- NW of Turner Crossing Road
7th Election District - 3rd Councilmanic
Legal Owner(s): Maryland Line Property, Inc.
Petitioner(s): Maryland Line Area Association & Dr. Richard McQuaid, Individually
HEARING: WEDNESDAY, SEPTEMBER 28, 1994 at 9:00 a.m. in Room 106, County Office Building.

Special Hearing to determine whether the use of R.C.-5 zoned property for a drainage easement to support commercial use is permitted by law.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204
or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 95-65-SPH (Item 63)
21405-415 York Road and 1033 Cold Bottom Road
NES York Road, 300' +/- NW of Turner Crossing Road
7th Election District - 3rd Councilmanic
Legal Owner(s): Maryland Line Property, Inc.
Petitioner(s): Maryland Line Area Association & Dr. Richard McQuaid, Individually
HEARING: WEDNESDAY, SEPTEMBER 28, 1994 at 9:00 a.m. in Room 106, County Office Building.

Special Hearing to determine whether the use of R.C.-5 zoned property for a drainage easement to support commercial use is permitted by law.

A handwritten signature in cursive script that reads "Arnold Jablon".

Arnold Jablon
Director

cc: Maryland Line Property, Inc.
Maryland Line Area Association/Richard McQuaid
J. Carroll Holzer, Esq.

NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

January 27, 1995

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 95-65-SPH

MARYLAND LINE AREA ASSN., INC. and DR. RICHARD MCQUAID -Petitioners
N/s York Road, 300' +/- NW of Turner Crossing Road (21405-415 York Road and 1033 Cold Bottom Road) (Shelley Retail Center)
7th Election District
3rd Councilmanic District

SPH -Petition of Maryland Line Area Assn., Inc., et al /interpretation of use of property at 1033 Cold Bottom Road, zoned R.C. 5, for drainage easement for 21405-415 York Road

10/27/94 -Z.C.'s Order in which Petition for Special Hearing was DENIED in part and GRANTED in part.

*PP'd at hearing
3/23/95; recusal by
M. Sawyer. Permit
to agreed date
of 5/10/95.*

ASSIGNED FOR: THURSDAY, MARCH 23, 1995 at 10:00 a.m.

cc: J. Carroll Holzer, Esquire Counsel for Appellants /Petitioners
Maryland Line Area Assn., Inc. Appellants /Petitioners
and Dr. Richard McQuaid

Newton A. Williams, Esquire Counsel for Legal Owners
Maryland Line Property, Inc. and Legal Owners
Charles Ensor /Cold Bottom Farms, Inc.

David R. Snyder

People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

LORNE LANGER - COURT REPORTER

Kathleen C. Weidenhammer
Administrative Assistant





County Board of Appeals of Baltimore County

K. M. H.

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

March 23, 1995

NOTICE OF POSTPONEMENT & REASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 95-65-SPH

MARYLAND LINE AREA ASSN., INC. and DR. RICHARD MCQUAID -Petitioners
N/s York Road, 300' +/- NW of Turner Crossing Road (21405-415 York Road and 1033 Cold Bottom Road) (Shelley Retail Center)
7th Election District
3rd Councilmanic District

SPH -Petition of Maryland Line Area Assn., Inc., et al /interpretation of use of property at 1033 Cold Bottom Road, zoned R.C. 5, for drainage easement for 21405-415 York Road

10/27/94 -Z.C.'s Order in which Petition for Special Hearing was DENIED in part and GRANTED in part.

which was scheduled for hearing on March 23, 1995 was POSTPONED ON THE RECORD; and has been

REASSIGNED FOR: WEDNESDAY, MAY 10, 1995 at 10:00^{11:00} a.m.

- cc: J. Carroll Holzer, Esquire ✓ Counsel for Appellants /Petitioners
- Maryland Line Area Assn., Inc. Appellants /Petitioners
- and Dr. Richard McQuaid
- Newton A. Williams, Esquire ✓ Counsel for Legal Owners
- Maryland Line Property, Inc. and Legal Owners
- Charles Ensor /Cold Bottom Farms, Inc.
- David R. Snyder
- People's Counsel for Baltimore County ✓
- Pat Keller
- Lawrence E. Schmidt
- Timothy M. Kotroco
- W. Carl Richards, Jr. /ZADM
- Docket Clerk /ZADM
- Arnold Jablon, Director /ZADM

Kathleen C. Weidenhammer
Administrative Assistant





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

May 11, 1995

NOTICE OF DELIBERATION

Having concluded this case on May 10, 1995, the County Board of Appeals has scheduled the following date and time for deliberation in the matter of:

MARYLAND LINE AREA ASSN., INC., ET AL
- PETITIONERS CASE NO. 95-65-SPH

DATE AND TIME : Thursday, May 18, 1995 at 9:00 a.m.
LOCATION : Room 48, Basement, Old Courthouse

cc: J. Carroll Holzer, Esquire Counsel for Appellants /Petitioners
Maryland Line Area Assn., Inc.
and Dr. Richard McQuaid Appellants /Petitioners

Newton A. Williams, Esquire Counsel for Legal Owners
Maryland Line Property, Inc. and Legal Owners
Charles Ensor /Cold Bottom Farms, Inc.

David R. Snyder

People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

Kathleen C. Weidenhammer
Administrative Assistant

H.K.M. /copied

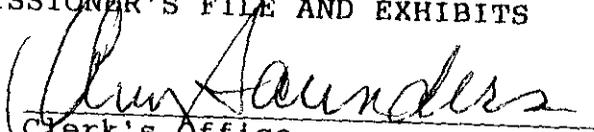


PETITION OF: People's Counsel for Balto. Co.

CIVIL ACTION # C-95-004750

IN THE MATTER OF MARYLAND LINE AREA ASSOCIA-
TION, INC. & DR. RICHARD
MCQUAID

RECEIVED FROM THE COUNTY BOARD OF
APPEALS EXHIBITS, BOARD'S RECORD
EXTRACT & TRANSCRIPT FILED IN THE
ABOVE-ENTITLED CASE, AND ZONING
COMMISSIONER'S FILE AND EXHIBITS


Clerk's Office

Date: 8/1/95

Case No. 95-65-SPH

Maryland Line Area Ssoc., Inc. - Petitioner

NE/s York Road, 300' +/- of Turner Crossing
Road (21405-415 York Road and 1033 Cold
Bottom Road)

7th District

Appealed: 11/23/94

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

J. Carroll Holzer, Esq.
305 Washington Avenue, Suite 502
Towson, Maryland 21204

RE: Item No. 63, Case No. 95-65-SPH
Petitioner: Maryland Line Property, Inc.

Dear Mr. Holzer:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on August 15, 1994 and a hearing scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

- 1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by Zoning personnel.
- 2) Anyone using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. All petitions filed in this manner will be reviewed and commented on by Zoning personnel prior to the hearing. In the event that the petition has not been filed correctly, there is always a possibility that another hearing will be required or the Zoning Commissioner will deny the petition due to errors or incompleteness.
- 3) Attorneys, engineers and applicants who make appointments to file petitions on a regular basis and fail to keep the appointment without a 72 hour notice will be required to submit the appropriate filing fee at the time future appointments are made. Failure to keep these appointments without proper advance notice, i.e. 72 hours, will result in the forfeiture loss of the filing fee.

Very truly yours,
A handwritten signature in cursive script that reads "W. Carl Richards, Jr.".

W. Carl Richards, Jr.
Zoning Coordinator

WCR:jaw

Turn 9/28
95-65

BALTIMORE COUNTY, MARYLAND

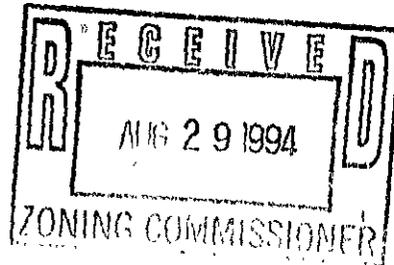
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration and
Development Management

DATE: August 29, 1994

FROM: Pat Keller, Director
Office of Planning and Zoning

SUBJECT: Petitions from Zoning Advisory Committee



The Office of Planning and Zoning has no comments on the following petition(s):

Item Nos.: 48, 49, 53, 54, 57, 58, 61, 62, 63, 64, 67, and 70.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3480.

Prepared by: Jeffrey W. Long
Division Chief: Gary L. Kerns

PK:JL:bjs

BALTIMORE COUNTY, MARYLAND
I N T E R O F F I C E C O R R E S P O N D E N C E

TO: Arnold Jablon, Director DATE: September 6, 1994
Zoning Administration and Development Management

FROM: *[Signature]* Robert W. Bowling, Chief
Developers Engineering Section

RE: Zoning Advisory Committee Meeting
for September 6, 1994
Item No. 63

The Developers Engineering Section has reviewed the subject zoning item. This site's proposed drainage easement outfall is subject to the Department of Public Works Storm Drain Design requirements for Maximum Velocities for Ditches and Channels, Table 10.3, Page D-27, "maximum allowable velocity of 5 feet per second on meadow type grasses."

The landscaping shown on the plan does not reflect the landscaping being required on the final landscape plan

RWB:sw

Baltimore County Government
Fire Department



700 East Joppa Road Suite 901
Towson, MD 21286-5500

(410) 887-4500

DATE: 08/25/94

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW

LOCATION: SEE BELOW

Item No.: SEE BELOW

Zoning Agenda:

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

8. The Fire Marshal's Office has no comments at this time,
IN REFERENCE TO THE FOLLOWING ITEM NUMBERS: 60, 62, 63, 64, 65,
67, 68, 69, 70, 71 AND 72.

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File



BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

95-65

TO: ZADM
FROM: DEPRM
Development Coordination
SUBJECT: Zoning Advisory Committee
Agenda: 8/29/94

DATE: 8/31/94

The Department of Environmental Protection & Resource Management has no comments for the following Zoning Advisory Committee Items:

Item #'s:

- 63
- 64
- 65
- 66
- 68
- 69
- 70
- 71
- 72

LS:sp

LETTY2/DEPRM/TXTSBP



Maryland Department of Transportation
State Highway Administration

O. James Lighthizer
Secretary
Hal Kassoff
Administrator

September 8, 1994

Ms. Julie Winiarski
Zoning Administration and
Development Management
County Office Building
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Baltimore County
MD 45
Maryland Line Property
Incorporated
Shelley Retail
Special Hearing
Item # +63 (WCR)
Mile Post 14.26

RECEIVED
SEP 12 1994

Dear Ms. Winiarski:

This office has reviewed the plan for the referenced item and we offer the following:

ZADM

In our previous review of the concept and development plans for the referenced development and in a letter to Mr. Donald T. Rascoe, Development Manager, dated September 15th, we indicated the proposed entrance improvements along MD 45, were acceptable to the State Highway Administration (SHA).

Therefore, we have no objection to approval for the special hearing to determine whether the use of R.C.-5 zoned property for a drainage easement to support commercial use, is permitted by law.

Also, upon final approval of the proposed development through Baltimore County's Development Review process, entrance construction shall be subject to the terms and conditions of an access permit issued by this office, with the following submittals required:

- a. Eight (8) copies of the site plan showing the SHA requirements.
- b. Completed application.
- c. Performance bond, letter of credit, or certified check (include Federal ID number or social security number on certified checks only) in the amount of 150% of the actual entrance construction cost (to include the cost of relocating any affected utilities) and in an even thousand dollar increment. These must be made payable to the State of Maryland. (Please note that it takes 6-8 weeks for a certified check to be returned after project completion and SHA final inspection).

My telephone number is 410-333-1350 (Fax# 333-1041)

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

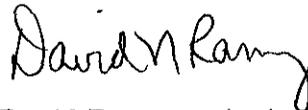
Ms. Julie Winiarski
Page Two
September 8, 1994

- d. An engineering fee check in the amount of \$50.00 for each point of access, made payable to the State of Maryland.
- e. A letter of authorization from the appropriate agency relative to the relocation of any utilities which may be necessitated by this construction. Or, a letter from the developer acknowledging and agreeing to the financial responsibility for relocating any affected utilities, provided the cost for the utility relocation is included in the surety submitted for the permit.

The surety for entrance construction must be received by this office prior to our approving any building permits for this development.

Should you have any questions, or require additional information, please contact Bob Small at (410) 333-1350. Thank you for the opportunity to review this plan.

Very truly yours,



David Ramsey, Acting Chief
Engineering Access Permits
Division

BS/es

Baltimore County Government
Office of Zoning Administration
and Development Management

Tim
9/28



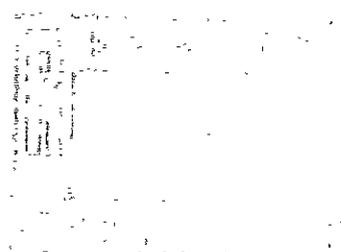
111 West Chesapeake Avenue
Towson, MD 21204

September 15, 1994

(410) 887-3353

J. Carroll Holzer, Esquire
305 Washington Avenue
Suite 502
Towson, MD 21204

95-65



RE: Preliminary Petition Review (Item #63)
Legal Owner: Maryland Line Property,
Inc. and Cold Bottom Farms, Inc.
Petitioner: Maryland Line Area
Association, and Dr. Richard
McQuaid, Individually
21405-415 York Rd. & 1033 Cold Bottom Rd.
7th Election District

Dear Mr. Holzer:

At the request of the attorney/petitioner, the above referenced petition was accepted for filing without a final filing review by the staff. The plan was accepted with the understanding that all zoning issues/filing requirements would be addressed. A subsequent review by the staff has revealed unaddressed zoning issues and/or incomplete information. The following comments are advisory and do not necessarily identify all details and inherent technical zoning requirements necessary for a complete application. As with all petitions/plans filed in this office, it is the final responsibility of the petitioner to make a proper application, address any zoning conflicts and, if necessary, to file revised petition materials. All revisions (including those required by the hearing officer) must be accompanied by a check made out to Baltimore County, Maryland for the \$100.00 revision fee.

1. On The Petition Forms: Due to the (apparently conflicting) wording on the petition form, the staff cannot comment on the appropriateness of the hearing request.

The following necessary information is lacking from the petition application package:

- A. No signature of legal owner.
- B. No telephone number of legal owner.
- C. No telephone number for the attorney.
- D. No signature or power of attorney for any legally authorized representative of Maryland Line Area Association (petitioners).

J. Carroll Holzer, Esquire
August 29, 1994
Page 2

2. On the Description Forms for Easement and Cold Bottom Farms, Maryland Line Property, Inc.:
 - A. No seals of engineer, surveyor, or landscape architect.
 - B. The descriptions are not in a zoning description format, which requires a public street right-of-way reference in feet distance and direction in order to establish location for zoning.

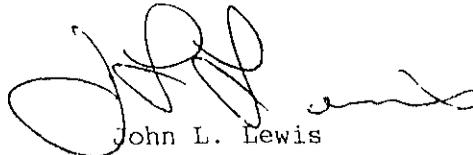
3. On the Plan: (also referenced as Exhibit B)
 - A. No title for special hearing.
 - B. Not to scale.
 - C. Not legible (due to reduced size). Detailed comments not possible due to this condition.
 - D. Not reproducible for permanent microfilm records due to reduced size.
 - E. The site areas are not clearly indicated to agree with the descriptions nor are these areas shown in bold outline with metes and bounds or points of beginning.

4. Exhibit C referenced in the petition form not included in the package for review. Comments not possible.

See the accompanying non-residential properties zoning hearing checklist which specifies the above required standards.

If you need further information or have any questions, please do not hesitate to contact me at 887-3391.

Very truly yours,


John L. Lewis
Planner II

JLL:scj

Enclosures (receipt & checklist)

cc: Zoning Commissioner

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

December 2, 1994

Newton A. Williams, Esquire
Nolan, Plumhoff and Williams
210 West Pennsylvania Avenue
Suite 700
Towson, MD 21204

RE: Petition for Special Hearing
N/S York Road, 300'+/- NW of
Turner Crossing Road
(21405-415 York Road and 1033
Cold Bottom Road)
7th Election District
3rd Councilmanic District
Maryland Line Area Assoc., Inc.
and Dr. Richard McQuaid-Petitioners
Case No. 95-65-SPH

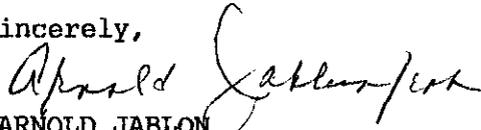
94 DEC 20 PM 2:35

Dear Mr. Williams:

Please be advised that an appeal of the above-referenced case was filed in this office on November 23, 1994 by J. Carroll Holzer, Esquire. All materials relative to the case have been forwarded to the Board of Appeals.

If you have any questions concerning this matter, please do not hesitate to contact Eileen O. Hennegan at 887-3353.

Sincerely,


ARNOLD JABLON
Director

AJ:eoh

c: J. Carroll Holzer, Esquire
Holzer and Lee
305 Washinton Avenue, Suite 502
Towson, MD 21204

People's Counsel



APPEAL

Petition for Special Hearing
NE/S York Road, 300'+/- of Turner Crossing Road
(21405-415 York Road and 1033 Cold Bottom Road)
7th Election District - 3rd Councilmanic District
Maryland Line Area Assoc., Inc.-PETITIONER
Case No. 95-65-SPH

Petition for Special Hearing

Description of Property

Certificate of Publication

Certificate of Posting

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Petitioner(s) and Protestant(s) Sign-In Sheets

Petitioner's Exhibits: 1 - Letter and attachments from Peek/Smith, Inc.
2 - Copy of Case No. VII-278
3 - Copy of Case No. 93-93-SPH
4 - Letter from Norman E. Gerber to Zoning Commissioner, dated August 29, 1994
5 - Letter from Paul J. Solomon to Zoning Commissioner, dated September 9, 1994
6 - 3 Photographs
6A- 6 Photographs
6B- 6 Photographs
6C- Application for Building Permit

Miscellaneous Exhibits: 1 - Joint Exhibit No. 1-Development Plan Site Proposal Plan
2 - Exhibit B-Development Plan-Site Proposal Plan
3 - Letter to Zoning Commissioner with Motion to Dismiss Special Hearing sent by Newton A. Williams, Esquire
4- Memorandum of People's Counsel
5 - Letter with attachment to Zoning Commissioner from J. Carroll Holzer, Esq, dated October 14, 1994

Zoning Commissioner's Order dated October 27, 1994 (Denied in Part, Granted in Part)

Notice of Appeal received on November 23, 1994 from J. Carroll Holzer, Esquire

c: J. Carroll Holzer, Esquire, Holzer and Lee, 305 Washington Avenue, Suite 502, Towson, MD 21204
Newton A. Williams, Esquire, Nolan, Plumhoff and Williams, 210 West Pennsylvania Avenue, Suite 700, Towson, MD 21204
People's Counsel of Baltimore County, M.S. 2010

Request Notification: Patrick Keller, Director, Planning & Zoning
Lawrence E. Schmidt, Zoning Commissioner
Timothy M. Kotroco, Deputy Zoning Commissioner
W. Carl Richards, Jr., Zoning Supervisor
Docket Clerk
Arnold Jablon, Director of ZADM

APPEAL

Petition for Special Hearing
NE/S York Road, 300'+/- of Turner Crossing Road
(21405-415 York Road and 1033 Cold Bottom Road)
7th Election District - 3rd Councilmanic District
Maryland Line Area Assoc., Inc.-PETITIONER
Case No. 95-65-SPH

- ✓ Petition for Special Hearing
- ✓ Description of Property
- ✓ Certificate of Publication
- ✓ Certificate of Posting
- ✓ Entry of Appearance of People's Counsel
- ✓ Zoning Plans Advisory Committee Comments
- ✓ Petitioner(s) and Protestant(s) Sign-In Sheets

Petitioner's Exhibits: ✓ 1 - Letter and attachments from Peek/Smith, Inc.
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✓ 6A- 6 Photographs
✓ 6B- 6 Photographs
✓ 6C- Application for Building Permit

Miscellaneous Exhibits: ✓ 1 - Joint Exhibit No. 1-Development Plan Site Proposal Plan
✓ 2 - Exhibit B-Development Plan-Site Proposal Plan
✓ 3 - Letter to Zoning Commissioner with Motion to Dismiss Special Hearing sent by Newton A. Williams, Esquire
✓ 4 - Memorandum of People's Counsel
✓ 5 - Letter with attachment to Zoning Commissioner from J. Carroll Holzer, Esq, dated October 14, 1994

✓ Zoning Commissioner's Order dated October 27, 1994 (Denied in Part, Granted in Part)

✓ Notice of Appeal received on November 23, 1994 from J. Carroll Holzer, Esquire, ON BEHALF OF MD LINE AREA ASSOC. & DR. RICHARD McQUAID

*c: J. Carroll Holzer, Esquire, Holzer and Lee, 305 Washington Avenue, Suite 502, Towson, MD 21204
Newton A. Williams, Esquire, Nolan, Plumhoff and Williams, 210 West Pennsylvania Avenue, Suite 700, Towson, MD 21204
People's Counsel of Baltimore County, M.S. 2010

Request Notification: Patrick Keller, Director, Planning & Zoning
Lawrence E. Schmidt, Zoning Commissioner
Timothy M. Kotroco, Deputy Zoning Commissioner
W. Carl Richards, Jr., Zoning Supervisor
Docket Clerk
Arnold Jablon, Director of ZADM

Maryland Line Area Association, Inc.
and Dr. Richard McQuaid, individual.
1501 Harris Mill Road
Parkton, Maryland 21120
(PETITIONERS)

Maryland Line Property, Inc.
P.O. Box 356
Monkton, MD 21111
(LEGAL OWNERS), AND

David R. Snyder
1103 Harris Mill Road
Parkton, MD 21120
(Interested Party)

Charles Ensor
Cold Bottom Farms, Inc.
1033 Cold Bottom Road
Sparks, Maryland 21152
(LEGAL OWNERS)

✓ E

MARYLAND LINE AREA ASSOC., INC.

95-65-SPH

NE/S York Road, 300' +/- of Turner
Road (21405-415 York Road and
1033 Cold Bottom Road

7th Election District

RE: Petition for Special Hearing

August 15, 1994	Petition for Special Hearing to determine whether the use of RC 5 zoned property for a drainage easement to support commercial use is permitted by law filed by J. Carroll Holzer, Esquire, on behalf of Maryland Line Area Association and Dr. Richard McQuaid, individually.
September 28	Hearing held on Petition by the Zoning Commissioner.
October 27	Order of the Zoning Commissioner in which Petition for Special Hearing was DENIED in part and GRANTED in part with one restriction.
November 23	Notice of Appeal filed by J. Carroll Holzer, Esquire, on behalf of the Maryland Line Area Association and Dr. Richard McQuaid, individually.
May 10, 1995	Hearing before the Board of Appeals.
May 18	Public Deliberation completed.
May 25	Opinion and Order of the Board in which the Petition for Special Hearing was DENIED; use is permitted.
June 1	Petition for Judicial Review filed in the Circuit Court for Baltimore County by People's Counsel for Baltimore County. (rec'd 6/8/95)
June 9	Certificate of Notice sent to interested parties.
August 7	✓ Transcript of testimony filed; Record of Proceedings filed in the Circuit Court.
March 4, 1996	✓ E Memorandum Opinion and Order of the CCT; decision of CBA AFFIRMED (Hon. J. Norris Byrnes)

1/25/95 -Letter from Newton A. Williams, Counsel for Property Owner; requesting early hearing date; heard before ZC in September; ZC's decision rendered in October.

1/27/95 -Notice of Assignment for hearing scheduled for Thursday, March 23, 1995 at 10:00 a.m. sent to following:

J. Carroll Holzer, Esquire
Maryland Line Area Assn., Inc.
and Dr. Richard McQuaid
Newton A. Williams, Esquire
Maryland Line Property, Inc. and
Charles Ensor /Cold Bottom Farms, Inc.
David R. Snyder
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

3/23/95 -Hearing postponed on the record; M. Sauer recused himself from this case; rescheduled to 5/10/95, upon confirmation by parties that this was acceptable date, available on all necessary calendars.

- Notice of PP and Reassignment sent to parties; case rescheduled to May 10, 1995 at 10:00 a.m.

5/08/95 -C. Holzer notified KCW that hearing on 5/10/95 created conflict with Circuit Court matter /Judge Fader. Was advised this date by Judge Fader of 9:30 a.m. CCT matter; was therefore requesting later start time for this case on 5/10/95 before Board. Request granted; notified N. Williams and P. Zimmerman of later start time of 11:00 a.m. on 5/10/95.

- Dr. McQuaid stopped in; verified later start time for 95-65-SPH before Board on 5/10/95; verified that start time is now 11:00 a.m.

(Note: Board members not notified of above change; scheduled to be here for deliberations at 9:00 a.m. and 9:30 a.m. /same Board of H.K.M.)

5/11/95 -Notice of Deliberation sent to parties; scheduled for Thursday, May 18, 1995 at 9:00 a.m. (H.K.M.) Copy of notice to Board.

5/18/95 - Petition for Special Hearing DENIED in open deliberation; use is permitted. Written Opinion and Order to be issued; appellate period to run from date of written Order. (H.K.M.)

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Maryland Line Area Assn., Inc. and
Dr. Richard McQuaid -Petitioners
Case No. 95-65-SPH

DATE : May 18, 1995 @ 9 a.m.

BOARD /PANEL : William T. Hackett (WTH)
S. Diane Levero (SDL)
Kristine K. Howanski (KKH)

SECRETARY : Kathleen C. Weidenhammer
Administrative Assistant

Among those present at the deliberation was Newton A. Williams, Esquire, on behalf of property owners; Dr. and Mrs. McQuaid, Appellants /Petitioners; and Carol Fisher, from the Office of People's Counsel.

PURPOSE --to deliberate issues and matter of petition presented to the Board; testimony and evidence taken at hearing of May 19, 1995. Written Opinion and Order to be issued by the Board.

WTH: As is required by law, we will deliberate the issue as to the special hearing.

KKH: Looking back on how Mr. Zimmerman characterized the issue, I think I've come to a decision looking at it from a different perspective. Don't believe question is whether or not it's permissible to have service on adjacent property; am persuaded that all activity is happening on the subject property. All we have is a situation of flow off site and rate on site; we are merely dealing with water pouring out onto the neighboring property. I was also persuaded because of that that we are dealing with a conduit which does not amount to use per se, but as use it is permitted use, per 1A04.2A.9. I did look at the case Mr. Zimmerman gave me; I do believe they can be distinguished, again because I do believe the other cases involved systems that were actually operating on the neighboring property, and I don't think that is what we are dealing with here. I don't think it's supporting a commercial use; it's just an underground conduit. That's where I am right now on this.

WTH: I can see no inherent or outstanding damages that are going to

Deliberation /Maryland Line Area Assn. /McQuaid 95-65-SPH

be done by a piece of drain pipe going across a farmer's field buried three to four feet deep, with the farmer's blessing; get easement to put pipe in ground; have agreement from farmer that it was not damaging to him. What we have is a proposed small shopping center, and if we did nothing at all, the water is going to run off of it. If the water runs off of it and runs across farmland, there are herbicides, fertilizers, silt, etc. So I can't see why Mr. Zimmerman is so adamantly opposed to this 15" pipe buried three feet deep across a farm field. Do not see any damage being done to anyone by that. In order to handle stormwater properly, I think this pipe is essential and I would grant special hearing.

SDL: The Appellants and People's Counsel argue this is similar to Long Green case /serving adjacent property not allowed in R.C. zoning. The owner argued that the wording of regulations is very clear in permitted underground conduit by matter of right. If they wanted to limit that, would have said so. In my opinion, this case is somewhat similar but not similar enough. Regulations permit underground conduits on R.C. land as matter of right; if they wanted to limit to public use, would have said so. Would allow this use for the subject property.

Closing statement by WTH: The Board has now reached unanimous decision in the deliberation; will issue written opinion and order in very near future, buttressing what went on here today.

Note: appellate period runs from date of written Opinion and Order and not from today's date.

Respectfully submitted,


Kathleen C. Weidenhammer
Administrative Assistant



LAW OFFICE
J. CARROLL HOLZER, PA
THOMAS J. LEE
—
J. HOWARD HOLZER
1907-1989

TOWSON OFFICE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MD 21204
(410) 825-6961
FAX: (410) 825-4923

CARROLL COUNTY OFFICE
1315 LIBERTY ROAD
ELDERSBURG, MD 21784
(410) 795-8556
FAX: (410) 795-5535

November 23, 1994

Arnold Jablon, Director
Zoning Administration and
Development Management
County Office Building
Towson, Maryland, 21204

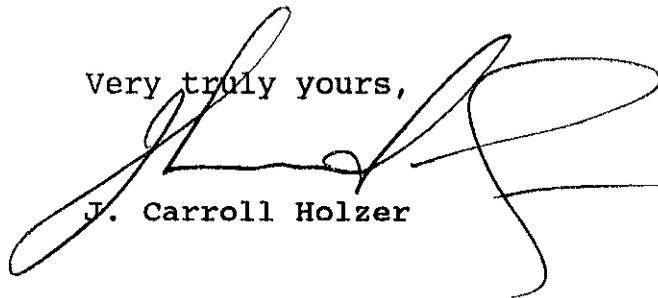
Re: Petition for Special Hearing
21405-415 York Rd. and 1033
Cold Bottom Road
3rd Councilmanic District
Case No. 95-65-SPH

Dear Mr. Jablon:

On behalf of my clients, the Maryland Line Area Association and Dr. Richard McQuaid, individually, undersigned counsel hereby notes an appeal from the decision of the Zoning Commissioner of Baltimore County in the above matter rendered on October 27, 1994 to the County Board of Appeals.

Enclosed you will find a check to cover the costs of filing the appeal.

Very truly yours,



J. Carroll Holzer

JCH:clg
cc: County Board of Appeals
People's Counsel
Newton Williams, Esquire

RECEIVED
NOV 23 1994

ZADM

January 5, 1995

David R. Snyder
1103 Harris Mill Road
Parkton, Maryland 21120

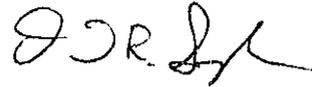
✓
CW
1-12-95

Baltimore County Board of Appeals
400 Washington Ave. Room 49
Towson, Maryland 21204

To Whom It May Concern,

I wish to be placed on the list of those notified of the appeals hearing regarding case number 95-65.

sincerely,



David R. Snyder

NEWTON A WILLIAMS
THOMAS J RENNER
WILLIAM P ENGLEHART, JR
STEPHEN J NOLAN*
ROBERT L. HANLEY, JR
ROBERT S. GLUSHAKOW
STEPHEN M. SCHENNING
DOUGLAS L BURGESS
ROBERT E. CAHILL, JR
C. WILLIAM CLARK
E. BRUCE JONES**
J JOSEPH CURRAN, III
STUART A. SCHADT

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS

CHARTERED

SUITE 700, COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-5340
(410) 823-7800
TELEFAX (410) 296-2765

JAMES D NOLAN
(RETIRED 1980)
J EARLE PLUMHOFF
(1940-1988)
RALPH E. DEITZ
(1918-1990)

WRITER'S DIRECT DIAL
823- 7856

*ALSO ADMITTED IN D C
**ALSO ADMITTED IN NEW JERSEY

January 25, 1995

HAND DELIVERY

Ms. Kathleen C. Weidenhammer
County Board of Appeals
Old Court House, Room 49
400 Washington Avenue
Towson, Maryland 21204

Re: Early Requested Hearing Date for
Zoning Commissioner Case No. 95-65-SPH
Petitioners Maryland Line Area Association, et al.
Property Owner Maryland Line Property, Inc.
(Mr. Randy Shelley)

Dear Ms. Weidenhammer:

Confirming several telephone conversations with you and your staff by both myself and by Mr. Shelley, we would greatly appreciate it if you will assign this case an early hearing date in front of the Board.

Your file will show that it was heard in late September of 1994, and decided favorably by Commissioner Schmidt's Findings of Fact and Conclusions of Law dated October 27, 1994.

It is in the best interest of all parties involved to have this matter heard by the Board and resolved at an early date. Thanking you for your kind attention to this request, I am

Respectfully,
Newton A. Williams
Newton A. Williams

cc: J. Carroll Holzer, Esquire
305 Washington Avenue, Suite 502
Towson, Maryland 21204

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
Room 47, Courthouse
400 Washington Avenue
Towson, Maryland 21204

Mr. Randy Shelley
Shelley Construction, Inc.
P.O. Box 356
Monkton, Maryland 21111

56 JAN 28 1995

✓- OCT
verified
6/9/95

Case No. 95-65-SPH

5/10/95

EXHIBITS

People's Counsel Exhibits

- ✓ 1. Portion of road map showing Maryland Line
- ✓ 2. Letter to Dr. + Mrs. McQuaid from James Dietes 10/13/94
- ✓ 3. Sect. 102 of BCZR
- ✓ 4. Article 1A - Resource Conservation Zones
- ✓ 5. State regulations: Article V, Stormwater Management
- ✓ 6. Title 26 - Dept. of the Environment, Subtitle 09, Water Management
- ✓ 7. Long Green Zoning Case: Legal Analysis
- ✓ 8. Long Green Valley Assn. Opinion
- ✓ 9. ~~1000~~^{RPO} scale zoning map, Sheet NW-38-B

Petitioner's Exhibits

- ✓ 1. Findings of Fact & Conclusions of Law 1/7/94
- ✓ 2. Decision of Zoning Commissioners 10/27/94
- ✓ 3. Rule 8 Authorization Papers
- ✓ 4. Photos [12] of subject property + its surroundings
- ✓ 5. Application for Building Permit
- ✓ 6. Zoning Commissioner's Decision - Long Green Pike
- ✓ 7. Revised comp's, Letter of permission to outfall, site Drainage Diagram
- ✓ 8. Attendance List - Petitioners

Joint Exhibits

- ✓ 1. Original Site Plan

5/10/95

Case No. 95-65-SPH

Maryland Line Area Assn., Inc. & Dr. Richard McQuaid

Opening - ~~Hot~~ Zimmerman

Re: 7 legal question w whether in Resource Conservation zone, ^{1 or 7} (R.C.5) ¹ ² ³ ⁴ ⁵ ⁶ ⁷ ⁸ ⁹ ¹⁰ ¹¹ ¹² ¹³ ¹⁴ ¹⁵ ¹⁶ ¹⁷ ¹⁸ ¹⁹ ²⁰ ²¹ ²² ²³ ²⁴ ²⁵ ²⁶ ²⁷ ²⁸ ²⁹ ³⁰ ³¹ ³² ³³ ³⁴ ³⁵ ³⁶ ³⁷ ³⁸ ³⁹ ⁴⁰ ⁴¹ ⁴² ⁴³ ⁴⁴ ⁴⁵ ⁴⁶ ⁴⁷ ⁴⁸ ⁴⁹ ⁵⁰ ⁵¹ ⁵² ⁵³ ⁵⁴ ⁵⁵ ⁵⁶ ⁵⁷ ⁵⁸ ⁵⁹ ⁶⁰ ⁶¹ ⁶² ⁶³ ⁶⁴ ⁶⁵ ⁶⁶ ⁶⁷ ⁶⁸ ⁶⁹ ⁷⁰ ⁷¹ ⁷² ⁷³ ⁷⁴ ⁷⁵ ⁷⁶ ⁷⁷ ⁷⁸ ⁷⁹ ⁸⁰ ⁸¹ ⁸² ⁸³ ⁸⁴ ⁸⁵ ⁸⁶ ⁸⁷ ⁸⁸ ⁸⁹ ⁹⁰ ⁹¹ ⁹² ⁹³ ⁹⁴ ⁹⁵ ⁹⁶ ⁹⁷ ⁹⁸ ⁹⁹ ¹⁰⁰ ¹⁰¹ ¹⁰² ¹⁰³ ¹⁰⁴ ¹⁰⁵ ¹⁰⁶ ¹⁰⁷ ¹⁰⁸ ¹⁰⁹ ¹¹⁰ ¹¹¹ ¹¹² ¹¹³ ¹¹⁴ ¹¹⁵ ¹¹⁶ ¹¹⁷ ¹¹⁸ ¹¹⁹ ¹²⁰ ¹²¹ ¹²² ¹²³ ¹²⁴ ¹²⁵ ¹²⁶ ¹²⁷ ¹²⁸ ¹²⁹ ¹³⁰ ¹³¹ ¹³² ¹³³ ¹³⁴ ¹³⁵ ¹³⁶ ¹³⁷ ¹³⁸ ¹³⁹ ¹⁴⁰ ¹⁴¹ ¹⁴² ¹⁴³ ¹⁴⁴ ¹⁴⁵ ¹⁴⁶ ¹⁴⁷ ¹⁴⁸ ¹⁴⁹ ¹⁵⁰ ¹⁵¹ ¹⁵² ¹⁵³ ¹⁵⁴ ¹⁵⁵ ¹⁵⁶ ¹⁵⁷ ¹⁵⁸ ¹⁵⁹ ¹⁶⁰ ¹⁶¹ ¹⁶² ¹⁶³ ¹⁶⁴ ¹⁶⁵ ¹⁶⁶ ¹⁶⁷ ¹⁶⁸ ¹⁶⁹ ¹⁷⁰ ¹⁷¹ ¹⁷² ¹⁷³ ¹⁷⁴ ¹⁷⁵ ¹⁷⁶ ¹⁷⁷ ¹⁷⁸ ¹⁷⁹ ¹⁸⁰ ¹⁸¹ ¹⁸² ¹⁸³ ¹⁸⁴ ¹⁸⁵ ¹⁸⁶ ¹⁸⁷ ¹⁸⁸ ¹⁸⁹ ¹⁹⁰ ¹⁹¹ ¹⁹² ¹⁹³ ¹⁹⁴ ¹⁹⁵ ¹⁹⁶ ¹⁹⁷ ¹⁹⁸ ¹⁹⁹ ²⁰⁰ ²⁰¹ ²⁰² ²⁰³ ²⁰⁴ ²⁰⁵ ²⁰⁶ ²⁰⁷ ²⁰⁸ ²⁰⁹ ²¹⁰ ²¹¹ ²¹² ²¹³ ²¹⁴ ²¹⁵ ²¹⁶ ²¹⁷ ²¹⁸ ²¹⁹ ²²⁰ ²²¹ ²²² ²²³ ²²⁴ ²²⁵ ²²⁶ ²²⁷ ²²⁸ ²²⁹ ²³⁰ ²³¹ ²³² ²³³ ²³⁴ ²³⁵ ²³⁶ ²³⁷ ²³⁸ ²³⁹ ²⁴⁰ ²⁴¹ ²⁴² ²⁴³ ²⁴⁴ ²⁴⁵ ²⁴⁶ ²⁴⁷ ²⁴⁸ ²⁴⁹ ²⁵⁰ ²⁵¹ ²⁵² ²⁵³ ²⁵⁴ ²⁵⁵ ²⁵⁶ ²⁵⁷ ²⁵⁸ ²⁵⁹ ²⁶⁰ ²⁶¹ ²⁶² ²⁶³ ²⁶⁴ ²⁶⁵ ²⁶⁶ ²⁶⁷ ²⁶⁸ ²⁶⁹ ²⁷⁰ ²⁷¹ ²⁷² ²⁷³ ²⁷⁴ ²⁷⁵ ²⁷⁶ ²⁷⁷ ²⁷⁸ ²⁷⁹ ²⁸⁰ ²⁸¹ ²⁸² ²⁸³ ²⁸⁴ ²⁸⁵ ²⁸⁶ ²⁸⁷ ²⁸⁸ ²⁸⁹ ²⁹⁰ ²⁹¹ ²⁹² ²⁹³ ²⁹⁴ ²⁹⁵ ²⁹⁶ ²⁹⁷ ²⁹⁸ ²⁹⁹ ³⁰⁰ ³⁰¹ ³⁰² ³⁰³ ³⁰⁴ ³⁰⁵ ³⁰⁶ ³⁰⁷ ³⁰⁸ ³⁰⁹ ³¹⁰ ³¹¹ ³¹² ³¹³ ³¹⁴ ³¹⁵ ³¹⁶ ³¹⁷ ³¹⁸ ³¹⁹ ³²⁰ ³²¹ ³²² ³²³ ³²⁴ ³²⁵ ³²⁶ ³²⁷ ³²⁸ ³²⁹ ³³⁰ ³³¹ ³³² ³³³ ³³⁴ ³³⁵ ³³⁶ ³³⁷ ³³⁸ ³³⁹ ³⁴⁰ ³⁴¹ ³⁴² ³⁴³ ³⁴⁴ ³⁴⁵ ³⁴⁶ ³⁴⁷ ³⁴⁸ ³⁴⁹ ³⁵⁰ ³⁵¹ ³⁵² ³⁵³ ³⁵⁴ ³⁵⁵ ³⁵⁶ ³⁵⁷ ³⁵⁸ ³⁵⁹ ³⁶⁰ ³⁶¹ ³⁶² ³⁶³ ³⁶⁴ ³⁶⁵ ³⁶⁶ ³⁶⁷ ³⁶⁸ ³⁶⁹ ³⁷⁰ ³⁷¹ ³⁷² ³⁷³ ³⁷⁴ ³⁷⁵ ³⁷⁶ ³⁷⁷ ³⁷⁸ ³⁷⁹ ³⁸⁰ ³⁸¹ ³⁸² ³⁸³ ³⁸⁴ ³⁸⁵ ³⁸⁶ ³⁸⁷ ³⁸⁸ ³⁸⁹ ³⁹⁰ ³⁹¹ ³⁹² ³⁹³ ³⁹⁴ ³⁹⁵ ³⁹⁶ ³⁹⁷ ³⁹⁸ ³⁹⁹ ⁴⁰⁰ ⁴⁰¹ ⁴⁰² ⁴⁰³ ⁴⁰⁴ ⁴⁰⁵ ⁴⁰⁶ ⁴⁰⁷ ⁴⁰⁸ ⁴⁰⁹ ⁴¹⁰ ⁴¹¹ ⁴¹² ⁴¹³ ⁴¹⁴ ⁴¹⁵ ⁴¹⁶ ⁴¹⁷ ⁴¹⁸ ⁴¹⁹ ⁴²⁰ ⁴²¹ ⁴²² ⁴²³ ⁴²⁴ ⁴²⁵ ⁴²⁶ ⁴²⁷ ⁴²⁸ ⁴²⁹ ⁴³⁰ ⁴³¹ ⁴³² ⁴³³ ⁴³⁴ ⁴³⁵ ⁴³⁶ ⁴³⁷ ⁴³⁸ ⁴³⁹ ⁴⁴⁰ ⁴⁴¹ ⁴⁴² ⁴⁴³ ⁴⁴⁴ ⁴⁴⁵ ⁴⁴⁶ ⁴⁴⁷ ⁴⁴⁸ ⁴⁴⁹ ⁴⁵⁰ ⁴⁵¹ ⁴⁵² ⁴⁵³ ⁴⁵⁴ ⁴⁵⁵ ⁴⁵⁶ ⁴⁵⁷ ⁴⁵⁸ ⁴⁵⁹ ⁴⁶⁰ ⁴⁶¹ ⁴⁶² ⁴⁶³ ⁴⁶⁴ ⁴⁶⁵ ⁴⁶⁶ ⁴⁶⁷ ⁴⁶⁸ ⁴⁶⁹ ⁴⁷⁰ ⁴⁷¹ ⁴⁷² ⁴⁷³ ⁴⁷⁴ ⁴⁷⁵ ⁴⁷⁶ ⁴⁷⁷ ⁴⁷⁸ ⁴⁷⁹ ⁴⁸⁰ ⁴⁸¹ ⁴⁸² ⁴⁸³ ⁴⁸⁴ ⁴⁸⁵ ⁴⁸⁶ ⁴⁸⁷ ⁴⁸⁸ ⁴⁸⁹ ⁴⁹⁰ ⁴⁹¹ ⁴⁹² ⁴⁹³ ⁴⁹⁴ ⁴⁹⁵ ⁴⁹⁶ ⁴⁹⁷ ⁴⁹⁸ ⁴⁹⁹ ⁵⁰⁰ ⁵⁰¹ ⁵⁰² ⁵⁰³ ⁵⁰⁴ ⁵⁰⁵ ⁵⁰⁶ ⁵⁰⁷ ⁵⁰⁸ ⁵⁰⁹ ⁵¹⁰ ⁵¹¹ ⁵¹² ⁵¹³ ⁵¹⁴ ⁵¹⁵ ⁵¹⁶ ⁵¹⁷ ⁵¹⁸ ⁵¹⁹ ⁵²⁰ ⁵²¹ ⁵²² ⁵²³ ⁵²⁴ ⁵²⁵ ⁵²⁶ ⁵²⁷ ⁵²⁸ ⁵²⁹ ⁵³⁰ ⁵³¹ ⁵³² ⁵³³ ⁵³⁴ ⁵³⁵ ⁵³⁶ ⁵³⁷ ⁵³⁸ ⁵³⁹ ⁵⁴⁰ ⁵⁴¹ ⁵⁴² ⁵⁴³ ⁵⁴⁴ ⁵⁴⁵ ⁵⁴⁶ ⁵⁴⁷ ⁵⁴⁸ ⁵⁴⁹ ⁵⁵⁰ ⁵⁵¹ ⁵⁵² ⁵⁵³ ⁵⁵⁴ ⁵⁵⁵ ⁵⁵⁶ ⁵⁵⁷ ⁵⁵⁸ ⁵⁵⁹ ⁵⁶⁰ ⁵⁶¹ ⁵⁶² ⁵⁶³ ⁵⁶⁴ ⁵⁶⁵ ⁵⁶⁶ ⁵⁶⁷ ⁵⁶⁸ ⁵⁶⁹ ⁵⁷⁰ ⁵⁷¹ ⁵⁷² ⁵⁷³ ⁵⁷⁴ ⁵⁷⁵ ⁵⁷⁶ ⁵⁷⁷ ⁵⁷⁸ ⁵⁷⁹ ⁵⁸⁰ ⁵⁸¹ ⁵⁸² ⁵⁸³ ⁵⁸⁴ ⁵⁸⁵ ⁵⁸⁶ ⁵⁸⁷ ⁵⁸⁸ ⁵⁸⁹ ⁵⁹⁰ ⁵⁹¹ ⁵⁹² ⁵⁹³ ⁵⁹⁴ ⁵⁹⁵ ⁵⁹⁶ ⁵⁹⁷ ⁵⁹⁸ ⁵⁹⁹ ⁶⁰⁰ ⁶⁰¹ ⁶⁰² ⁶⁰³ ⁶⁰⁴ ⁶⁰⁵ ⁶⁰⁶ ⁶⁰⁷ ⁶⁰⁸ ⁶⁰⁹ ⁶¹⁰ ⁶¹¹ ⁶¹² ⁶¹³ ⁶¹⁴ ⁶¹⁵ ⁶¹⁶ ⁶¹⁷ ⁶¹⁸ ⁶¹⁹ ⁶²⁰ ⁶²¹ ⁶²² ⁶²³ ⁶²⁴ ⁶²⁵ ⁶²⁶ ⁶²⁷ ⁶²⁸ ⁶²⁹ ⁶³⁰ ⁶³¹ ⁶³² ⁶³³ ⁶³⁴ ⁶³⁵ ⁶³⁶ ⁶³⁷ ⁶³⁸ ⁶³⁹ ⁶⁴⁰ ⁶⁴¹ ⁶⁴² ⁶⁴³ ⁶⁴⁴ ⁶⁴⁵ ⁶⁴⁶ ⁶⁴⁷ ⁶⁴⁸ ⁶⁴⁹ ⁶⁵⁰ ⁶⁵¹ ⁶⁵² ⁶⁵³ ⁶⁵⁴ ⁶⁵⁵ ⁶⁵⁶ ⁶⁵⁷ ⁶⁵⁸ ⁶⁵⁹ ⁶⁶⁰ ⁶⁶¹ ⁶⁶² ⁶⁶³ ⁶⁶⁴ ⁶⁶⁵ ⁶⁶⁶ ⁶⁶⁷ ⁶⁶⁸ ⁶⁶⁹ ⁶⁷⁰ ⁶⁷¹ ⁶⁷² ⁶⁷³ ⁶⁷⁴ ⁶⁷⁵ ⁶⁷⁶ ⁶⁷⁷ ⁶⁷⁸ ⁶⁷⁹ ⁶⁸⁰ ⁶⁸¹ ⁶⁸² ⁶⁸³ ⁶⁸⁴ ⁶⁸⁵ ⁶⁸⁶ ⁶⁸⁷ ⁶⁸⁸ ⁶⁸⁹ ⁶⁹⁰ ⁶⁹¹ ⁶⁹² ⁶⁹³ ⁶⁹⁴ ⁶⁹⁵ ⁶⁹⁶ ⁶⁹⁷ ⁶⁹⁸ ⁶⁹⁹ ⁷⁰⁰ ⁷⁰¹ ⁷⁰² ⁷⁰³ ⁷⁰⁴ ⁷⁰⁵ ⁷⁰⁶ ⁷⁰⁷ ⁷⁰⁸ ⁷⁰⁹ ⁷¹⁰ ⁷¹¹ ⁷¹² ⁷¹³ ⁷¹⁴ ⁷¹⁵ ⁷¹⁶ ⁷¹⁷ ⁷¹⁸ ⁷¹⁹ ⁷²⁰ ⁷²¹ ⁷²² ⁷²³ ⁷²⁴ ⁷²⁵ ⁷²⁶ ⁷²⁷ ⁷²⁸ ⁷²⁹ ⁷³⁰ ⁷³¹ ⁷³² ⁷³³ ⁷³⁴ ⁷³⁵ ⁷³⁶ ⁷³⁷ ⁷³⁸ ⁷³⁹ ⁷⁴⁰ ⁷⁴¹ ⁷⁴² ⁷⁴³ ⁷⁴⁴ ⁷⁴⁵ ⁷⁴⁶ ⁷⁴⁷ ⁷⁴⁸ ⁷⁴⁹ ⁷⁵⁰ ⁷⁵¹ ⁷⁵² ⁷⁵³ ⁷⁵⁴ ⁷⁵⁵ ⁷⁵⁶ ⁷⁵⁷ ⁷⁵⁸ ⁷⁵⁹ ⁷⁶⁰ ⁷⁶¹ ⁷⁶² ⁷⁶³ ⁷⁶⁴ ⁷⁶⁵ ⁷⁶⁶ ⁷⁶⁷ ⁷⁶⁸ ⁷⁶⁹ ⁷⁷⁰ ⁷⁷¹ ⁷⁷² ⁷⁷³ ⁷⁷⁴ ⁷⁷⁵ ⁷⁷⁶ ⁷⁷⁷ ⁷⁷⁸ ⁷⁷⁹ ⁷⁸⁰ ⁷⁸¹ ⁷⁸² ⁷⁸³ ⁷⁸⁴ ⁷⁸⁵ ⁷⁸⁶ ⁷⁸⁷ ⁷⁸⁸ ⁷⁸⁹ ⁷⁹⁰ ⁷⁹¹ ⁷⁹² ⁷⁹³ ⁷⁹⁴ ⁷⁹⁵ ⁷⁹⁶ ⁷⁹⁷ ⁷⁹⁸ ⁷⁹⁹ ⁸⁰⁰ ⁸⁰¹ ⁸⁰² ⁸⁰³ ⁸⁰⁴ ⁸⁰⁵ ⁸⁰⁶ ⁸⁰⁷ ⁸⁰⁸ ⁸⁰⁹ ⁸¹⁰ ⁸¹¹ ⁸¹² ⁸¹³ ⁸¹⁴ ⁸¹⁵ ⁸¹⁶ ⁸¹⁷ ⁸¹⁸ ⁸¹⁹ ⁸²⁰ ⁸²¹ ⁸²² ⁸²³ ⁸²⁴ ⁸²⁵ ⁸²⁶ ⁸²⁷ ⁸²⁸ ⁸²⁹ ⁸³⁰ ⁸³¹ ⁸³² ⁸³³ ⁸³⁴ ⁸³⁵ ⁸³⁶ ⁸³⁷ ⁸³⁸ ⁸³⁹ ⁸⁴⁰ ⁸⁴¹ ⁸⁴² ⁸⁴³ ⁸⁴⁴ ⁸⁴⁵ ⁸⁴⁶ ⁸⁴⁷ ⁸⁴⁸ ⁸⁴⁹ ⁸⁵⁰ ⁸⁵¹ ⁸⁵² ⁸⁵³ ⁸⁵⁴ ⁸⁵⁵ ⁸⁵⁶ ⁸⁵⁷ ⁸⁵⁸ ⁸⁵⁹ ⁸⁶⁰ ⁸⁶¹ ⁸⁶² ⁸⁶³ ⁸⁶⁴ ⁸⁶⁵ ⁸⁶⁶ ⁸⁶⁷ ⁸⁶⁸ ⁸⁶⁹ ⁸⁷⁰ ⁸⁷¹ ⁸⁷² ⁸⁷³ ⁸⁷⁴ ⁸⁷⁵ ⁸⁷⁶ ⁸⁷⁷ ⁸⁷⁸ ⁸⁷⁹ ⁸⁸⁰ ⁸⁸¹ ⁸⁸² ⁸⁸³ ⁸⁸⁴ ⁸⁸⁵ ⁸⁸⁶ ⁸⁸⁷ ⁸⁸⁸ ⁸⁸⁹ ⁸⁹⁰ ⁸⁹¹ ⁸⁹² ⁸⁹³ ⁸⁹⁴ ⁸⁹⁵ ⁸⁹⁶ ⁸⁹⁷ ⁸⁹⁸ ⁸⁹⁹ ⁹⁰⁰ ⁹⁰¹ ⁹⁰² ⁹⁰³ ⁹⁰⁴ ⁹⁰⁵ ⁹⁰⁶ ⁹⁰⁷ ⁹⁰⁸ ⁹⁰⁹ ⁹¹⁰ ⁹¹¹ ⁹¹² ⁹¹³ ⁹¹⁴ ⁹¹⁵ ⁹¹⁶ ⁹¹⁷ ⁹¹⁸ ⁹¹⁹ ⁹²⁰ ⁹²¹ ⁹²² ⁹²³ ⁹²⁴ ⁹²⁵ ⁹²⁶ ⁹²⁷ ⁹²⁸ ⁹²⁹ ⁹³⁰ ⁹³¹ ⁹³² ⁹³³ ⁹³⁴ ⁹³⁵ ⁹³⁶ ⁹³⁷ ⁹³⁸ ⁹³⁹ ⁹⁴⁰ ⁹⁴¹ ⁹⁴² ⁹⁴³ ⁹⁴⁴ ⁹⁴⁵ ⁹⁴⁶ ⁹⁴⁷ ⁹⁴⁸ ⁹⁴⁹ ⁹⁵⁰ ⁹⁵¹ ⁹⁵² ⁹⁵³ ⁹⁵⁴ ⁹⁵⁵ ⁹⁵⁶ ⁹⁵⁷ ⁹⁵⁸ ⁹⁵⁹ ⁹⁶⁰ ⁹⁶¹ ⁹⁶² ⁹⁶³ ⁹⁶⁴ ⁹⁶⁵ ⁹⁶⁶ ⁹⁶⁷ ⁹⁶⁸ ⁹⁶⁹ ⁹⁷⁰ ⁹⁷¹ ⁹⁷² ⁹⁷³ ⁹⁷⁴ ⁹⁷⁵ ⁹⁷⁶ ⁹⁷⁷ ⁹⁷⁸ ⁹⁷⁹ ⁹⁸⁰ ⁹⁸¹ ⁹⁸² ⁹⁸³ ⁹⁸⁴ ⁹⁸⁵ ⁹⁸⁶ ⁹⁸⁷ ⁹⁸⁸ ⁹⁸⁹ ⁹⁹⁰ ⁹⁹¹ ⁹⁹² ⁹⁹³ ⁹⁹⁴ ⁹⁹⁵ ⁹⁹⁶ ⁹⁹⁷ ⁹⁹⁸ ⁹⁹⁹ ¹⁰⁰⁰

Similar to Long Green Case - 2nd rd decided a septic system is not allowed in R.C. 2 zone. 7 case is on appeal.

Location is Maryland Line, northernmost village of Pa. line in county.

Letter 10/13/94 - from Dept. of Environment to McQuaid

Section 102.1 BCZR - No land shall be used or

except in conformity w/ reg.

Section 1A04 -

A shopping center is not a permitted use in 7 RC5 zone or any other

Section 4-201 - State law

Md Code - Title 26 subtitle 9

Article 5, Title 14 - Baltimore Co. Code

Opening - Holzer

~~to be~~

7 priv. easement crossing across Cold Bottom Farms, on RC zoned land. We didn't know 7 before 2000 but it isn't shown.

An RC's opinion w/ 10/27 it isn't considered, so it's a legitimate subject of a special hearing.

A narrow issue: 3 Schmidt's decision an appropriate decision? We say it isn't.

Opening - Newton Wms

At 7 2nd Develop Plan Hearing - 7 Cold Bottom Farms Ppty is marked RC5

A septic system on offsite ppty is an offsite use + is improper.

The stormwater mgmt system is on 7 site requested.

Mr. Shelley is developing 7 tract, W dist. more 7 5,000 sq. ft., so he is required to d stormwater mgmt.

We're preparing a 10' case —
sect. 1 A 04.2 ? — ~~sect~~ includes "other underground conduits"
regs don't say anything ab. public, semi-public, priv.
The writer & regs know how I say "public" if it's w/ 2a mean.
Had > Council meant I say "public" it wd be ad so.
I agree w/ > Long Green case.
All w/ hw is a permitted underground conduit, ^{running} northward

People's Council case

Witness Paul J. Solomon

Headed Environmental Plan sect., Office of Planning, in '70s & '80s

I've visited site & looked at RC 5, we in least 4 sites
I & 3 > planners in charge deal w/ > develop — w/ > RC 5 regs,
we cover ab half > county.
To protect ^{we} agricultural land & reservoirs, we were be affected by
urban sprawl, & protect rural villages.
We enacted RC 2 - Agricultural zone
RC 3 -
RC 4 - watershed protection area
RC 5 - encourage develop — occurs in
success areas, particularly around rural villages
rather in all over land

Bill 98, in 1975 - Council enacted those 4 zones, we
were applied in '76 & zoning maps.

We worked w/ planning subcommittee, later w/ Planning Bd, in w/
County Council.

I & 3 raised & owned & operated a farm until Feb. in '95.

I & 3 involved in > mapping process.

I & 3 > North County planner for years, we involved > RC zoning
classifications.

RC 5 zoning is an attempt I provide home sites in agricultural
areas. We placed it around areas like Jacksonville,
Md. Tenn.

Subj. site has BM-CR zoning
To South + West is RC 2.

York Rd is a spine
| Leg. area to east is RC 5

Red circle - approx. location w/ Shelley Develop site on P.C. Ex. 9
Around rural village w/ RC 5 surrounding business use
w/ RC 2 surrounding it.

Shelley Develop site - approx. 1 acre.

Site has been farmed in recent years - all open land, a ridge top area.

Water drains to RC 5 part of site.

↳ is a depression or swale we at seems most w/ water w/ d
chain to: mostly on RC 5 part.

Function w/ stormwater mgmt tends to maintain > flow off > site
↳ same volume as before develop.

Most w/ facilities - a system w/ pipes & overland flow w/ d
water & an open pond we is usually a dry pond.

Subj. site - a plan to manage stormwater w/ utilizes a collection
system w/ pipes > water into an infiltration pond; & out
a pipe ^{running} 450' + into an outfall - ?

In his exp., it is not common to use ~~the~~ Resource map
zones ~~to~~ ^{adjacent} & serve commercial zones.

None is intended. - I am involved in many meetings + discussions
to allow an RC zoned area to accommodate an adj. commercial
use is never contemplated - not to it w/ frustrate > intent +
purpose w/ RC zoning. It w/ in effect to an expansion
w/ commercial use into RC 5.

Is pipe will not in + of itself affect > RC 5, except perhaps in
a minor degree. But I've allowed a commercial use to go on
RC 5 - once it opens & doors, where is it stop?

Once it approve it, it can make a case for parking lots + other
more obtrusive uses.

RC 5 zoning law -

IA 04.2 - history w/ principal uses as a right + by spec. exception
A. 9 - All these are public or quasi-public
7 intention was not intended to permit a use of commercial
facilities

P.C. Ex 4

A "public" use I mean would be a governmental use. A telephone co. would be "quasi-public".

A community water system would fall under Paragraph 9; it would be "public" in a functional sense.
2. I want to look after & handle stormwater mgmt on > site:
They could enhance & infiltration structures - could make parking areas an infiltration bed by using pervious paving. They possibly could allow some passive flow off > site.
"spreader" - water could go into ditch areas & spread it out.

Cross

I 3 not > draft a person for Bill 98-75. Mrs. Buddeschain placed > annex on > maps, I did not oversee on a day-to-day basis. We had a written North County Plan & it was presented to > Board.

Permitted uses in > DR zone

1. B-10
Thyjae
"Public" Utility uses.

> Infiltration trench has both quantitative & qualitative purpose, & it is located on > site.

I have not been involved in any situation where

Was it > intent in Bill 98-75 to retain & flow on-site if it is on Commercial property adjacent to RC5.

> intention in stormwater mgmt to reduce > flow off > site & ~~from~~ pre-develop flow.

He agrees & The intent in > Council in retaining > BM-CR zoning is to allow its ~~development~~ develop.

Witness Dr. Richard McQuaid

1501 Harris Mill Rd., Parkton
testifying ^{as} president, Mid Line Area Assoc. & for himself
Shelley Retail Center is proposing to use a 10' easement along
property.

Assoc. objects to stormwater mgmt on RC5 land b/c it is a commercial use
it would run into a tributary in Harris Mill Creek, which is

on my ppty [7 tributary]; it's a trout stream.
It interferes w/ agriculture. It w/ no runoff from parking lot,
bldg roof, etc. a \$400 million industry.

Photos rep. current lot intended for retail center, + surroundings.
At present, no develop on ppty.

11/20/94 - Site plan submitted

9/28/94 - McQuaid filed a special petition

He met w/ DEFRM 10/7/94

P.C. Ex. 2 - 10/13/94 - Letter L McQuaid from District

Compatibility issues raised at develop conference: 7 bldg, 3 L

by 7 space. It w/ 7 legs bldg in Md. Line.

Other 6, 300 sq. ft.; 2 permitted 6, 600 sq. ft.

bank is 2,400 sq. ft.

Thompson's 3,500 sq. ft.

Garage + post office together is 5,000 sq. ft.

Md Line Inn is 5,200 sq. ft.

7 septic system is under 7 parking lot bldg 2 can't empty room L put it
elsewhere.

7 tributary of Harris Mill Creek, also called Deer Creek, runs thru my
ppty.

On PC 5 Ex. - McQuaid's ppty is in red, as is Shelley ppty.

His home is less than 1 mile from subj. ppty. He has 22 acres.

Cross

His group did not appeal > hearing officer's develop hearing.

An infiltration trench has an outflow only after a 10-yr. storm.

concedes 7 pipe w/ take flow up L a 100-yr. storm.

He questions whether > quality or > water wld be taken care of
on > site.

Agrees It's an underground conduit so it carries water underground.

look at
Long Green
Case!

3 not intended as a vehicle L extend commercial zones.

Deliberation - May ~~25~~¹⁸ - 9 a.m.

15" pipe 450' long is to be buried at 3½' under ground.

Mr. Peck - on case - exists (sewer) pipe.

It is a part facility. County does require U2 to ability to maintain it by access lease.

Closing - Zimmerman

Case law - 7 landmark Md. case, actually in a residential zone, involving access to

~~Lineback~~ Construction v. City of Baltimore - 257 Md. 635

Unless it's specifically permitted, commercial use isn't allowed - U3 an access road.

In Long Green case - Court v. Spec. Appeals cited Lineback - did it have a septic system? It had agreed to a septic system could not be placed in an RC zone

It is a consistent line of cases going back to Lineback in 1970. Sect. in RC

P.C. Ex. 4-1 A 04.29 - allows conduits & other imp.

↳ a septic system on a single ppty wd be an accessory to a house.
↳ a community sewer system might be a quasi-public system.
↳ the best use allows > potential of primary uses.
↳ there is a difference in zoning law between principal uses & personal uses.

It is never intended, other than public or quasi-public utility systems, it involved > extension of a commercial use.

↳ storm drain is ancillary to shopping center.

↳ power line stand by itself as a primary use.

↳ real distinction is understanding if w/ w here is integral to commercial use. It is not intended if commercial use is to be allowed in an RC zone.

You can't have a peninsula of commercial zones, access roads, septic systems, etc. around it in RC zones.

Either all allowed or not. It's a simple.

↳ Board addressed it very pt. in Long Green Case. U section

↳ not intended as a vehicle to extend commercial zones.

Must look at Long Green case!

Closing - Newton Wms

7 Co. Council 3 very clear in what it said. ZC know perfectly well how to

1 A 27 - ZC said "public" utility uses

say "public"

not permitted as a right.

7 courts have said

forming reqs shd be strictly construed. When we're dealing w/ ZC zones, we don't have public water & public sewers. It's meaningless unless it agrees it means what it says.

If you give 7 words 2 plain meaning, these systems have to utilize some type of outfall. ZC is not a septic system or park lot or some other offensive use. We're limited by 7 statute to 6,600 sq ft.

We haven't used any land outside 7 land of 7 water break; we've

had an approved stormwater mgmt plan.

Read ZC's opinion

95-65 SPH Md. Line Area Assn

5/10/95

Holtzer codes - Pete L. - opening -

legal question - in RC zone can storm
water system serve commercial property

Md Line is on md line - ex#36 pte 83
P.C exhibit #1 - road map section

property has 1 acre BL -

15" pipe - 450' long in private easement -
from developer onto cold bottom farm

entered P.C ex# 2

102.1- BCZR - no land etc -
P.C ex# 3

1a- RC

1a04- RC5 -

Shop center proposed on front of area

entered P.C ex# 4

Storm Water mgmt - state law

Title 26 - chapter II

entered P.C exhibit #5 + #6

entered opinion Long Green Case
#7 + #8

Z.C. - permitted use as conduit -
in RC zones -

Waltzer - added comments

Larry Schmidt - eat Long Green

Newton Williams - opening

entered Pet exhibit #1 - 1/7/94
" " " #2 - 10/27/94

bdg fits CR district -

explained storm water mgmt. plan
entered joint app #1 - site plan

project will disturb over 5000 sq' thus ^{storm water} needs pond

BCZR 1a04 - A9

1601A4 no mention public use

PC case

Paul Solomon

RR1 Box 27, New Freedom, Pa

has walked the site -
reviewed most items as to site -

he developed RC zone class.

North County plan - 1975

this area represented by north county group
at inception of R.C. zones

new R.C. zones mapped 1995-1996 -

entered ~~1996~~²⁰⁰ scale map - 1993 - zoning map
enacted fall 1996

Solomon inspected zoning map
entered P.C. # 9 -

site was former farm - w/ old road bed

in this case - plan is to manage system
collect, pipe into 450' away to small stream

this 1st time stormwater system for comm property

1a 04.2 - use as of right + S.E.

" 9 conduit

wording as not intended to provide use for
commercial -

? is it feasible to build center +
keep storm water on site tans - maybe

Tam Williams

Bill 98-75 created R.C. zones

page 1b10 - word public not always used

rain fall creates need for storm water -

water across farm land has fertilizer,
herbicides, manure, dust, lime, etc

(4)
1992 comp maps show intent for site to
be used.

Dr Richard Mc Quaid - 5001 Harris Mill
Parkton Rd

pres - Md Lmi Area Asso

has rule & auth. papers

testified at Schmidt's hearing

Shelly intends to use easement -

objects to - Storm Water on R.C land use

run-off will empty into Harris Mill Creek
proposal will create pollutants -

enters photos - I.C.#s - Dr took photos -
currently no development

photos - 9/94 - entered Pet #4

records show no bldg permit yet granted
Pet exh #5

entered Schmidt's decision exh #6

Oct 13, 1994 letter - Dieter's letter -

at Schmidt's hearing proposal for storm
water handling. Ensor grants easement.
Jan 20, 1994

exhibit #7

pipe discharge cu'/sec ~~#1~~

(5)

10 yr storm - 1200 gals/min to 3420/min

Sched for 9/28/94 special hearing

9/28/94 met with DEPRM 10/2/94
letter OCT 13 -

neighbors concerns

1. Bldg too large 6300 sq'

2 next bank - 3700 sq'

Thompson store 3500

garage 5600 sq'

Melvin Inn - 5400 sq'

entered attendance list ex# 8

Pete L. zoning map -

shows ex# 1 - road map
marks his home in red -

Sam Williams

his group chose not to appeal - he did appeal

shown Pet exhibit #7

show from storms this chart

P. Crests

Pete L. closing -

road - case law -
Line back vs City Balto 257 Md 635

septic syst. conn. 543 at. 737

~~XXXXXXXXXX~~

1 Apr. 29 - conduct section -

Williams closing
1a27

public deliberation

scheduled May 25, 1995

pipe to be buried 3'-4' deep

so farmer can work -

May 25, 1995

H K M

CASE NO. 95-65-SPH MD LINE AREA ASSOC, INC + DR. McQUAID

petition for entry in of use of prop. at 1013
Cold Bottom Rd

(K)

Opening Statements - Carroll Holzer referred to Peter Zimmerman

Q - whether or not, in resource conservation zones, it is permissible to have a storm water drainage system source on adjacent com'l prop. Long Green similar case held that septic system not allowed to serve com'l prop. in agricultural zone

450 ft long drainage pipe, 15" pipe outfall in private easement

P.C. Ex. 1 - Map of Md. Line

P.C. Ex. 2 - 10-13-94 ltr from James Dieter to McQuaid's

P.C. Ex. 3 §102.1 of Balto. County zoning rego. - No land occupied except in conformity w/ the rego. - Only such uses as are specifically enumerated are permitted

§1A04 - R.C. 5 rule sets forth listed uses

shoppy center not permitted in R.C. 5 zone, nor for storm water mgmt or other structure associated w/ com'l use.

P.C. Ex. 4

P.C. Ex. 5 §4-201 of Environment Article sets up storm water mgmt system w/ rego. provided by co. county

P.C. Ex. 6 Art. 5 §14 of Balto County Code

P.C. Ex. 7 1994 Long Green Case Analysis

P.C. Ex. 8 Bd of Apps. op. in Long Green case

not a permitted use, contrary to spirit of zoning
Zoning Comm'n took opp. view, believing it filled
conduit rules or vehicle

will call Paul Solomon as W - present at creation of RC zones, assisted in drafting of RC zones for many yrs, etc.

Carroll Holzer

Schmidt has been involved in all Long Green + all of that. orig'l showing did not have pipe on adjacent prop. 0 years. 2nd showing approved w/ easement on Cold Bottom prop. issue never raised, debated or considered before Schmidt

New Wms. - For Respondents

Pet. Ex. 1 Earliest Schmidt decision 1-9-94

Pet. Ex. 2 Later decision 10-27-94 - subj. of today's appeal
R-94-192 -

Jt. Ex. 1 - orig'l site plan -

will disturb > 5,000 sq. ft., so need to engage in storm H₂O mgmt -
10 ft. easement to accommodate storm H₂O, not storm H₂O
mgmt per se

Regs. make no distinction betw pub., semi-pub., & priv.;
specifically permitted use in RC5 zone. whole infiltration
system is a prop. allowed to have it

1st W for Pet. - Paul Solomon R.R. 1, Box 27, New Freedom Pa

testified many times previously - Geo'town OH - 1974-9
Pen St. - B.S. Agric. - Bio. Math - Environmental

Planning head of Environmental Agency for 1970's + 1980's
until Δ'd to DEPRM; looked at prop. site, went over hist. of
RC zone, corresp., Storm H₂O Mgmt Regs., + schematic

pk - Jt. Ex. 1 familiar w/ + testified in Long Run case
was planner in charge dealg w/ RC classifications.

+ Bill 100 to protect reservoirs, rural areas + Am. areas
next to urban areas RC2 agricultural RC4 watersheds

RC5 encourage development to occur in recent areas

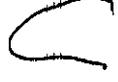
all part of plan he helped create - 1974 1st time applied to
zoning maps.

worked w/ subplots, etc.; raised, owned + operated
farm until 2/93; RC zones mapped late 1975 into 1976
+ enacted by County Council in 1976

P.C. Ex. 9 - 200 scale map - Comprehensive Zoning 1992

typical of pattern of rural valleys - RC5 surrounds
bus. use which in town is surrounded by agricultural use
of RC2

ridge top area w/ H₂O draining mostly to RC5 in swale
in middle of prop.

☆  storm H₂O mgmt - manages flow off site at same

Pet. Ex. 6 - Ed's decision in Long Green

- ① Septic system was a "use of land" - Webster's
Third New Int'l Dictionary defines "use" as the
legal enjoyment of prop. that consists in its employment,
occup'n, exercise or practice"

② storm water outfall on Cold Bottom Rd prop.

Pet. Ex. 7 1-20-94 overlay of pipe after testimony
calc'n of H₂O runoff - 10 yr storm range will be
1200 - 3420 gals./min. ; 100 yr storm
infiltration trenches have not been as successful
as that calc'n

Cannot, by def'n, be accessory to the div'ment of
the Shelley Retail Center on the prop. owned by Md. Time
Prop, Inc. - underground pipe wd be a "use" of the prop. but
is permitted in R.C.S zone per B.C. 2. K. & E 1A04. 2.A. (9) ^{underground} ^{water} ^{drains}

6300 sq. ft. - bigger than anything else already in
Md line - garage + post office - 5,000 sq. ft.,
bank 3,500 sq. ft., Md. line sm 5,400 sq. ft.
firehouse - don't know

Pet. Ex. 8 - Attendance list

has 22 acres of prop. w/ stream running thru, at the
Johns Hopkins Medical School
group w/ which he was allied did not appeal

underground "conduit" def' - "natural or artificial channel
thru which water or other fluid passes or is conveyed"

CLOS6

Pete Zimmema

landmark Md case in residential zone involving access
to a com'l use - 1 257 Md. 635 - homeback
unless specifically permitted, com'l use not allowed
+ access to a com'l use is a type of com'l use

.. 543 A. 2d 737 - Com. ^{zoning} case involving septic system
Long Green case agreed on this basis that fact cannot
support com'l use.

§1404.29 of B.C.Z.R. allowg underground conduits
That use is in several of the other R.C. zones going back to
1975. This allows the potential for principal uses (as
opposed to an accessory use). There are no principal com'l
uses permitted in rural residential zones = never intended
that this reg. be used for an accessory → integral to
the com'l use. Concerned that need for outside prop. will
mean that agricultural uses do get impeded or frustrated.
Can't say going to allow storm drain, but not septic.

60 A.2d 754 - Kalb

early special except 214 A.2d 146 - Dear

NEWT

Uses allowed - all other areas set forth "public" uses
& that is silent

RC never intended to be served w/pub. H₂O or anything else
pub. → "use" stat. superfluous or meaningless if conduit
lang. meant to be confined to uses of RC prop.

not like septic system or parking lot w/offensive use
haven't used any land outside our land for the
treatment of water.

unanimous - special by will be granted

Main legal issue: R15 Zone can have a ~~SWM~~ (SWM use) for
Precedent: ZHVA if so, it is de facto a rezoning of the land

Sec 102.1 - the means only if on the list

State Reg
Co code 14-151
14-152

ZHVA
93-93 10/26/94
- septic system couldn't be used to
serve a high rise above

~~wasn't issue~~

Council Hoyer:

- ① - Issue: ZHVA 2nd Ex
- ② - Wesley Chapel, case -

RC-5 Zone is behind

②

~~PEEX1~~) Zoning Map

~~PEEX2~~ - Plan Proposed

~~PEEX3~~ -

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME

ADDRESS

NEWTON A. WILLIAMS

700 COURT TOWERS, TOWSON, MD. 21284

RANDY SHELLEY



95-65-5PH

Shelley - Special Hearing

Sept. 28 '94

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

ADDRESS

Dr. Richard W. McQuaid

1501 Harris Mill Rd Parkton 21120

Ruth R Doran

1635 Bond Rd, Parkton MD 21120

Gloria McGuire

1501 Harris Mill Rd ^{Parkton, Md} 21120

Martha Slade Hackitt

20815 West Liberty Rd, White Hall Md.

Anna Swartz

18918 Calder Ave. Parkton, Md 21120

Anna Schemonski

1509 Harris Mill Rd, Parkton, Md 21120

Patrick D. Mendonca

200 Kaufman, Rd Parkton, Md 21120

ANTHONY SICHONSKI

1509 HARRIS MILL RD PARKTON MD 21120

Lee Burns

21715 W. Liberty Rd Parkton, Md

Helen Gernike

1707 Bond Rd, Parkton, Md.

Margie R Jones

1635 Bond Rd, Parkton, Md.



Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



~~Pet # 1~~
Pet. 1

Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

January 7, 1984

Newton A. Williams, Esquire
700 Court Towers
210 West Pennsylvania Avenue
Towson, Maryland 21204

RE: DEVELOPMENT PLAN HEARING
E/S York Road at Maryland Line
(21450 York Road)
7th Election District - 3rd Councilmanic District
Maryland Line Property, Inc. - Owner/Developer
Case No. VII-278

Dear Mr. Williams:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Development Plan has been approved in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

Handwritten signature of Lawrence E. Schmidt in cursive.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Randolph Shelley
2601 Cotter Road, Millers, Md. 21107

J. Carroll Holzer, Esquire
305 Washington Avenue, Suite 502, Towson, Md. 21204

People's Counsel
Case File

IN RE: DEVELOPMENT PLAN HEARING	* BEFORE THE
E/S York Road at Maryland Line	* ZONING COMMISSIONER
(21405 York Road)	* OF BALTIMORE COUNTY
7th Election District	
3rd Councilmanic District	
Maryland Line Property, Inc.	* Case No. VII-278
Owner/Developer	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Hearing Officer for consideration of a development plan prepared by Peek/Smith, Inc., Landscape Architects/Land Planners, for the proposed development of the subject property by Randolph L. Shelley, chief operating officer of Maryland Line Property, Inc., Developer. The property is proposed for development with a 6,384 sq.ft. retail building in accordance with the development plan submitted into evidence as Developer's Exhibit 1.

Appearing at the Hearing Officer's hearing required for this project were Randolph Shelley, on behalf of Maryland Line Property, Inc., Owner/Developer, and Ernest Peek, a principal with Peek/Smith, Inc., the Landscape Architect and Engineering firm who prepared the development plan for the subject site. Also appearing in support of the plan were Donald Koch of Engineering Technologies Associates, Inc., an expert in ground water and hydrology. Mr. Koch's firm did much of the environmental work associated with the development plan. Lastly, Paul Botzler, of Tamarack Construction Company, appeared and testified on behalf of the plan. Mr. Botzler's company will be the builder/design engineering firm associated with the project. The Developer was represented by Newton A. Williams, Esquire.

Numerous individuals appeared in opposition to the proposed project. Collectively, many of the Protestants were represented by J. Carroll Holzer, Esquire. Chief among the Protestants who participated were members of the Maryland Line Community Association. Individually, testimony was received from Dr. Richard McQuaid, Virginia Wampler, Pauline Hunt, Louise E. Fulton, and Bernard D. and Betty Brown. Many of these individuals reside immediately adjacent to the subject site, (Mr. & Mrs. Brown), or across York Road (Ms. Hunt and Ms. Fulton). Numerous other individuals who reside within the village of Maryland Line also appeared and testified.

In addition to the Developer's witnesses and Protestants, significant testimony was taken from representatives of those County agencies who reviewed the plan. These included Joseph Maranto, the Project Manager, Eldon Gemmel and Lee Dreiger with the Department of Environmental Protection and Resource Management (DEPRM), Les Schreiber from the Department of Public Works, and Carol McEvoy with the Office of Planning and Zoning. In addition to this testimony, which was taken over three full hearing days, numerous exhibits were submitted. All told, the Developer offered fourteen (14) different exhibits, including the development plan, numerous photographs, reports and studies, and artists' renderings of the proposed development. Moreover, sixteen (16) exhibits were offered by the Protestants. These included photographs, a video tape of the subject area, as well as several schematic renderings of the site. All of this testimony and evidence were carefully reviewed and examined by me. Moreover, in pursuit of the family Christmas tree, I was able to briefly inspect the subject site and its environs.

As to the history of this project, the concept plan conference for this development was conducted on May 10, 1993. As required, a commu-

nity input meeting was held on June 8, 1993. Subsequently, the developer submitted a development plan and a conference thereon was conducted on September 15, 1993. Following the submission of that plan, development plan comments were submitted by the appropriate agencies of Baltimore County and a revised development plan incorporating these comments was submitted at the hearing held before me on September 29, 1993. That hearing was continued to October 5, 1993. Testimony was again taken on November 23, 1993. Following the final hearing date of December 9, 1993, Counsel were allowed two (2) weeks to submit memoranda in lieu of final argument. These memoranda have also been read and considered. As agreed by the parties, this Hearing Officer's written opinion and Order is to be issued by Friday, January 7, 1994.

A brief description of the subject property and proposed project is in order. The subject property, known as 21450 York Road, consists of 1.1 acres zoned B.M.-C.R., and is located in the extreme northern end of Baltimore County immediately adjacent to York Road (Maryland Route 45), not far from I-83. The site is located within the village of Maryland Line, a small hamlet in Northern Baltimore County, which is quite old and historic in nature and character. It is probably one of the least commercially developed town centers in Baltimore County. The village is truly a rural town center and is surrounded by agricultural and rural uses. It was described by many of its residents as unchanged in recent years, but for the large impact of traffic resulting from recent development in southern Pennsylvania. Maryland Line is somewhat isolated and offers a stark contrast to the urban nature of Baltimore County near the Baltimore Beltway (I-695). In fact, many of the residents of Maryland Line patronize the businesses located in southern Pennsylvania rather than travel southward

on I-83 or York Road to Hunt Valley/ Cockeysville. The other closest major commercial areas are Bel Air in Harford County and Manchester in Carroll County.

As previously stated, the property is approximately 1 acre in net area, and is zoned B.M. Moreover, there is an overlay district of C.R. Apparently the site has been commercially zoned for many years. At the time of the adoption of the initial zoning regulations by Baltimore County in 1945, the site was zoned E-Commercial, the sole commercial zone under those regulations. From 1955 to 1992, the property was zoned B.M., but did not have a district designation. During the County Council's last cyclical zoning process in 1992, the C.R. (commercial/rural) district was added. The site is roughly square-shaped and is presently unimproved. Depending on one's perspective, the Developer proposes to construct what might be labeled a small commercial retail center, or strip shopping center, on the subject site. The proposed improvements are the subject of the numerous exhibits presented in this case. Essentially, a building of approximately 6,384 sq.ft. is proposed. This will be a single story building with no basement, approximately 140 feet long and 45 feet wide. However, the structure will be pivoted so that the 45-foot depth of the building will face York Road. That is, the building will be located on the site in such a manner that it will be perpendicular to York Road. It will contain from three to six retail/service uses. The Developer was unable to comment upon exactly what types of uses would be on site. Clearly, there will be no restaurants, taverns, or laundry facilities, in that the site will be on a private water system and restrictions as to water usage will prevent a large water user. However, lawyers' offices, insurance agencies, and certain retail outlets are anticipated. Moreover, 33 parking spaces,

slightly more than that required, will be constructed on a parking lot to the south side of the proposed building.

As previously noted, a substantial volume of testimony and evidence was offered over the hearing days, all of which was carefully considered by me. The specific testimony of each and every witness present will not be recounted herein. Rather, this decision shall address the issues raised and recount only certain of the testimony and evidence which related to those issues. Addressing the issues presented in this fashion is consistent with Section 26-206 of the Baltimore County Code wherein it is provided that the Hearing Officer shall conduct a hearing on any comment or proposed or requested condition which remains unresolved on the plan.

The first issue raised by the Protestants in this matter questions the very nature of the procedural review process and whether same was followed in this case. Development in Baltimore County is now governed by Article 5, Development Regulations of Title 26 of the Baltimore County Code. These regulations were adopted in March, 1992 after much study by the County Administration and County Council. The regulations were promulgated and enacted after an exhaustive study of the existing CRG process. This review included input from both the development community as well as homeowners and residential neighborhood associations.

The development regulations as eventually enacted, clearly were fostered to include two key concepts. First, it was determined that the development review process under the old CRG format was entirely too time consuming and duplicitous. The development community complained of inordinate delays and repeat reviews during that process. Thus, the new development regulations attempted to correct this impropriety by affixing development to a definitive time table. Thus, the developer would be assured that

any project would be reviewed timely and consistently by the reviewing agencies of Baltimore County.

A second consideration was to insure community input. Many community representatives and residential subdivision groups complained that they were left out of the development process. Thus, a system requiring a community input meeting was established, thereby insuring ongoing community participation and knowledge of a particular development.

These concerns, which can often find themselves at odds, apparently created a problem in this case. It is uncontradicted that the development process proceeded smoothly through the initial concept plan submission and conference. Moreover, the file reflects that a community input meeting took place which was attended by numerous community representatives and allowed a free exchange of information and ideas at that time. The problem alleged by the Protestants occurred thereafter at the Development Plan Conference. This conference was held when the Developer submitted its plan for review of same by the reviewing agencies on September 29, 1993. The development plan and conference thereon is described in Sections 26-203 through 26-205 of the Baltimore County Code. Section 26-203 describes the information which must appear on the plan. Section 26-204 mandates the preliminary review of said plan and the scheduling of the Hearing Officer's hearing. As importantly, Section 26-205 discusses the development plan meeting. Thereunder, within Section 26-205(b), it is provided that a development plan conference shall be scheduled at least ten (10) working days prior to the Hearing Officer's hearing. The conference is to be attended by representatives of the numerous reviewing agencies described in that Section. As importantly, notice of the hearing is to be sent to all known parties and is open to the public. In this case, there seems to

be no dispute that one of the Protestants, namely Dr. Richard McQuaid, sought access to the meeting and in fact, was permitted to attend same. Clearly, he had every right to do so. However, the alleged problem occurred after the development plan conference. Apparently the Developer and several of the reviewing agencies were unable to resolve certain issues and concerns at the development plan conference. Thus, the conference was adjourned without resolution on a number of these issues. However, informal discussions between the County agencies and the Developer continued thereafter. The format of these informal discussions is unclear, however, they may have included meetings, correspondence and/or telephone conversations. Clearly, they were between only the developer's representatives and the County reviewing agencies and not Dr. McQuaid. Thus, he alleges that he was not allowed to be a party to these subsequent communications, thereby violating the spirit and intent of the regulations.

Due to this alleged error, Counsel for Dr. McQuaid moved for a denial of the plan, or, in the alternative, a postponement of the Hearing Officer's hearing on the first hearing date. After consideration of this request, I, in fact, granted a postponement and scheduled the hearing to be reconvened on October 5, 1993. My decision in this respect was based, in part, on the fact that an amended development plan was offered by the Developer on the first hearing day. The plan contained revisions which were no doubt made to reflect the resolution of certain issues reached during the informal communications subsequent to the development plan conference. In that Dr. McQuaid attended the development plan conference, he was entitled to advance knowledge of this resolution. Thus, a postponement was warranted. Any prejudice to the Protestants was cured by the postponement. The development plan ultimately considered by me was offered

and accepted at the first hearing day on September 29, 1993. The hearing on this plan continued for three additional days and was not concluded until nearly three months later, in December 1993. During that time, the Protestants had more than sufficient opportunity to examine the plan in detail and prepare their testimony and evidence in opposition thereto. Thus, it must be said, and needs to be said in the event of any appeal of this decision, that the Protestants have had every full and proper opportunity to examine the plan offered in this case and have not been prejudiced by their inability to participate in the discussions which occurred subsequent to the development plan conference. The spirit and goal of the development regulations, including promoting a timely process and allowing community participation, have been fully met in this case.

That all being said, however, a further comment about the development process is in order. It is clearly envisioned by Section 26-205 that review and negotiation by the County and the Developer on a particular plan should be concluded by the end of the development plan conference. Section 26-205(b) specifically requires an attempted resolution of any conflict between agency comments, the plan, and conditions proposed by the community. Moreover, immediately thereafter, written comments need to be submitted to the Hearing Officer describing any unresolved issues and containing agency comments. The time frame established mandates that the Developer and the County shall attempt to finalize their positions by the conclusion of the development plan conference. Clearly, it is hoped that by the end of that conference, all issues are resolved. However, if they are not, the Developer and the County can "agree to disagree" and allow the Hearing Officer to decide open issues. Although the process encourages negotiation of a project from concept plan to final development plan,

the time frame established within Section 26-205 must be followed. Continued amendment and alteration to the plan thereafter subjects the Developer to denial of the plan by this Hearing officer. All parties, including community representatives, are entitled to know what they will be facing when they step foot into the Hearing Officer's hearing. It is patently unfair to the community representatives for a new plan to be offered, particularly when they have carefully monitored the process by participating in both the community input meeting and attending the development plan conference which is open to the public. Hopefully, this Opinion will provide direction both for County agencies and the development community to avoid the pitfalls which were exposed in this case. Had this matter not been continued and heard over nearly three months, providing the Protestants more than ample opportunity to prepare and present their case, denial of the plan may have been warranted. However, it is again to be stated that in the subject case, owing to the unusual circumstances occasioned by the continued hearing in this matter as well as the requested and given postponement, there has been no prejudice to the Protestants and a denial of this plan is not appropriate on this basis.

Having fully addressed the procedural issue generated by this case, attention is next turned to the substantive matters of concern presented. Testimony and evidence was offered on a wide variety of issues. These included the following:

a) Traffic: Certain complaints and fears were raised by the Protestants regarding the projected traffic and resultant noise expected to be generated by this project. Mrs. Wampler, who lives across the street from the subject site, expressed concerns over potential increases in traffic. Ms. Ruth Doran, who lives nearby, complained about the large

volume of traffic which presently exists on York Road. Apparently many of the residents of southern Pennsylvania travel on York Road through Maryland Line during their commute to employment in Hunt Valley and the business communities to the south thereof. Other witnesses echoed these complaints and expressed concerns on this issue. However, the Protestants did not present any expert testimony on this issue.

I have considered the testimony presented by the Protestants in this regard. I am unpersuaded that their concerns are meritorious. The proposed center is located not far from I-83, the major traffic corridor on a north/south axis through Baltimore County. Moreover, the property immediately abuts York Road, certainly the largest non-interstate roadway in this area. There are no dangerous curves or hills nearby. Site distance does not appear to be a problem. The additional access point provided to this property will not exacerbate traffic congestion. For all of these reasons, as well as the comments issued by the appropriate governmental agencies, I am convinced that traffic will not be adversely affected by the proposed project. I see no basis to deny or modify the plan based on these considerations.

b) Well Water - Usage and Pollution: Quite obviously, the site is not served by public sewer and water and will be dependent upon a well for water supply. Mr. Koch testified concerning this issue. He indicated that a well has been drilled on this site and that pump tests have been conducted as required by Baltimore County. His findings, as codified in Petitioner's Exhibits 8, 9 and 10, conclude that there is sufficient water available on site. In his opinion, both sufficient water quality and quantity exists on this property. Moreover, the aquifer in this area is rich enough to support the well and surrounding uses. Mr. Koch concluded

that under a worst case scenario, only a limited draw down would occur at the nearest well.

The Protestants, through Dr. McQuaid and other well-owners in the subject locale, also testified extensively about this issue. They all expressed concerns about potential water usage and fear that the development as proposed would adversely affect the underlying aquifer and surrounding wells. Moreover, concerns about the quality of water and past problems at other wells, i.e., the Post Office, were expressed. The great volume of this testimony is contained within the record of this case and will not be repeated here. After considering all of the testimony and evidence offered on this issue, I am not persuaded that development as proposed should be denied on this basis. On balance, I am persuaded that sufficient water, from both a quality and quantity standpoint, exists to support the proposed retail center. I do not believe that development as anticipated will adversely affect the surrounding locale in this regard. I am convinced, however, that continuing monitoring of the ground water and review of proposed uses is appropriate. The Department of Environmental Protection and Resource Management (DEPRM) should continue its studies and reviews to insure that their initial estimates are on-line. Moreover, high water volume users should not be permitted on the site. As the Developer agreed, restaurants, laundry facilities, and similar businesses are inappropriate. In accordance with the development plan comments offered by DEPRM, dated July 21, 1993, certain restrictions shall be added to the plan to insure a detrimental impact will not result from water usage on this site. This restriction will insure that the underlying ground water, both from a quality and quantity standpoint will not be affected.

A meter to monitor water withdrawal and appropriate reports of same should be submitted to DEPRM on a regular basis so as to allow DEPRM to recommend and/or limit high water use activities on this site.

c) Storm Water Runoff: The storm water runoff plan/system was also a subject of much debate. Originally, the Developer's plan provided for an outfall of the storm water management system proposed for this site on an abandoned 16.5 foot right-of-way located to the north of the site. In fact, this right-of-way separates the property from Mr. & Mrs. Brown's property next door. It has not been determined who owns the 16.5 foot right-of-way. The photographs submitted into evidence show that this is a depressed roadway (unimproved). Due to the inability of the Developer to ascertain ownership, he proposes an alternative storm water management outfall system. In lieu of outfall onto the right-of-way, an easement has been obtained allowing for a drainage easement on the property encompassed by Cold Bottom Farms to the rear of this site. As shown on the site plan, a drainage easement parallel to this 16.5 foot right-of-way is proposed. This easement is on the south side of the property, away from the Brown's property. Testimony on the effectiveness of same was offered not only by the Developer's experts but also from Lee Dreiger of DEPRM. His testimony was conclusive that the Developer's modified plan is appropriate. It appears that the storm water management system as proposed will function properly and will prevent any storm water runoff from the site as developed to adjacent properties. In fact, the new plan should be welcomed by the Browns in that the outfall is located further from their property and buffered by the abandoned 16.5 foot right-of-way.

Questions were also raised as to storm water runoff on the front (west) side of the property. In fact, neighbors across the street on York

Road, fear runoff from the subject site across York Road and into their properties. Although the property is mildly sloped in the front towards York Road, plans offered by the Developer show that regrading will occur, by necessity, due to construction. Moreover, a significant landscape buffer will exist on the front of the property which will contain a pervious surface. Also, York Road is no doubt crowned to promote water runoff from that roadway. For all of these reasons, I do not believe that the fears expressed as to water runoff from the site crossing York Road are founded. In its entirety, the storm water management system appears entirely appropriate. It is a functional plan which will prevent any storm water runoff onto adjacent properties:

d) Septic System: An issue was also raised by the Protestants as to the proposed septic system. Additionally, the Developer presented testimony in this regard and evidence was received through County representatives and development plan comments. As noted above, the potential users of the proposed center will not be high volume water users. It is not anticipated that an extensive volume of septic waste will be generated. Testimony offered by the Developer was that the site has passed all percolation tests to this point. The well and septic system are sufficiently separated as required. In sum, there was no testimony offered to offset that produced by William Ensor on behalf of Baltimore County. In his view, the site meets the environmental holding capacity requirements codified in Section 259.3.C.5 of the B.C.Z.R. as well as all DEPRM standards.

e) Signage: As to signage, little testimony and evidence was offered other than the schematic renderings shown on the plan. The proposed freestanding sign appears entirely appropriate for both the property and the locale. It is unobtrusive and will not be internally illuminated.

Furthermore, by the nature of the direction of the facade of the building, any storefront signs would face the bank and not the residential properties across York Road. The proposed signage appears to be entirely appropriate and does not justify additional restriction or modification.

f) Landscaping and Forestation: The landscape plan offered is likewise appropriate. The site-as presently constituted is largely lawn and not wooded. A substantial volume of trees will not be lost as a result of the proposed development. In fact, the proposed landscaping might add to the actual number of plantings on site. This does not appear to be a significant issue.

g) Compatibility: The most significant substantive issue presented relates to compatibility. Simply stated, the Developer and the Protestants vehemently disagree as to whether the proposed development is compatible with the existing Maryland Line community.

Compatibility is, in fact, addressed in Section 26-282 of the Baltimore County Code. Therein, it is provided that the Director of Planning shall make compatibility recommendations to the Hearing Officer for developments in C.R. districts. The objectives and guidelines in determining compatibility are set forth in Section 26-282(b). Therein, a number of factors are listed regarding the construction, orientation, and layout of the building, and other improvements on a given property are discussed. Moreover, consideration must be given to landscape designs, preservation of significant features on the site, and aesthetic considerations generated by scale, proportion and massing. These considerations go hand in hand with the policies and goals enunciated within Section 259 of the B.C.Z.R. Within Section 259.2 of the B.C.Z.R., a statement of legislative intent for Commercial/Rural districts is established. It is provided therein

that the C.R. district is established primarily to provide opportunities for convenience shopping and personal services that are customarily and frequently needed by a rural residential population and tourists. C.R. districts are intended to foster small, rural commercial centers within a rural/agricultural locale, not to be regional commercial districts.

As to compatibility, the position of the Office of Planning and Zoning was favorable to the Developer. It is clear, based upon the testimony and evidence presented, that the Office of Planning and Zoning and the Developer conducted extensive negotiations and discussions regarding the proposed project. These discussions and negotiations resulted in the plan which is before me for consideration. The orientation of the building, the materials used in its construction, and the aesthetic and other features of these improvements were all as a result of the Office of Planning and Zoning's input. From their perspective, the Shelley Retail Center "is compatible with the surrounding community", subject to the design recommendations which they have offered.

Quite obviously, the Developer agrees with this assessment. Testimony from Mr. Shelley and his expert witnesses was that the proposed center is entirely appropriate. It was noted that the size of the center was 6,384 sq.ft., well under the 8,800 sq.ft. maximum allowed in a C.R. district. Moreover, no zoning variances of any type have been requested. Thus, the property is sufficiently set back from property lines and other tracts and buildings. Moreover, the Developer compared the proposed improvements with other buildings in Maryland Line. This testimony is particularly well-summarized in the memorandum offered by the Developer. The Developer contends that the proposed building is entirely compatible with other commercial structures in Maryland Line as to orientation and size.

The Protestants, for their part, vehemently disagree. Much of their evidence on this issue was presented through the testimony of Mr. Norman Gerber. Mr. Gerber, former Director of the Office of Planning and Zoning, has appeared many times before me as an expert in land planning. His views are also well-summarized in the Protestants' memorandum submitted at the conclusion of the hearing. In essence, he argues that the community of Maryland Line is an example of a 19th Century turnpike village, incompatible with a commercial strip shopping center. He compares the proposed facility with a more modern day shopping center, totally out of character with the village of Maryland Line. He also objects to the orientation of the building and believes it should be pivoted to face York Road. The entire size and scale of the project are also questioned by Mr. Gerber. Rather than a single building composed of several retail/service outlets, Mr. Gerber believes that independent, smaller structures should be offered. Other suggestions related to parking layout, scaling and mass of building detail, were also suggested by Mr. Gerber and are more fully set forth in the record in this case and the Protestants' memorandum.

Although perhaps not quite as eloquent, the lay witnesses who testified in opposition to the project were just as clear in their thoughts regarding compatibility. Mrs. Brown, the immediate neighbor, perhaps spoke best for the community when she indicated that, as to this project, she did not want to "see it, smell it, or hear it". Other residents expressed similar sentiments. Many of these long-time residents of Maryland Line perceive the proposed project as an unwanted and unneeded commercial intrusion into their village. They anticipate problems normally associated with urbanization (i.e., crime, traffic congestion, pollution, etc.) accompanying the proposed use.

In considering this issue, I am appreciative of the fact that this project is offered in Maryland Line. Would it be proposed in Essex, Catonsville, or Towson, there would probably not be a peep from the surrounding residents. For those individuals who reside in the more urban areas of Baltimore County near the Baltimore Beltway, this project no doubt seems innocuous. It is modest in size, scale and mass. However, to reiterate, this project is not envisioned for Catonsville, Towson, or Essex, but for Maryland Line. In many ways, Maryland Line is a world away from the commercial centers of Baltimore County. However, although dissimilar from the urban sections of Baltimore County, Maryland Line cannot isolate itself from the larger area in which it is situated. Although founded as an 18th Century small town village, it is no longer isolated and insulated from its urban neighbors. The residents of the community unwittingly conceded that when they acknowledged the increased volume of traffic which passes through their town from the new residential subdivisions in southern Pennsylvania. Maryland Line indeed is now on-line with the Megalopolis which exists from Washington D.C. in the south to New York City in the north. Broadly speaking, it must be recognized that the days of small, rural, isolated communities located close to major cities such as Baltimore are clearly numbered.

In sum, there is no doubt that Maryland Line has retained many of the characteristics of a small country village of yesteryear. Nonetheless, it has, and will, change. Just as clear is the fact that Maryland Line is not New York City, it is certain that it is not the Australian Outback either.

In my view, a significant fact in this case is the zoning of the subject property. In their collective wisdom, the Baltimore County Council

has zoned this property B.M., Business Major. Thus, the County Council has determined that this property is a business/commercial piece of land. The C.R. district designation reinforces this concept. Although limiting the extent and nature of business acceptable, this designation clearly envisions that this site can be properly used for commercial purposes. Thus, those who would argue that the property should not be developed in any manner and left pristine are mistaken, at least under the zoning designation under which this project must be considered. This property is a commercial tract and not an acre of farmland in the midst of cornfields. It is a commercial parcel in the center of a town, albeit a rural town. Having determined therefore that commercial activity on this site is appropriate, consideration must be given as to whether the proposed commercial use is, in fact, compatible. This is the real issue in this case.

In reviewing all of the exhibits, testimony and evidence presented, it is difficult to envision how a commercial project could be more compatible to rural surroundings. In my view, the appearance and architectural line of the building is as in character with this rural village as is possible. The structure certainly is within the square foot area requirements allowed in the C.R. regulations. It is not a skyscraper, and although compared to a commercial strip center, is vastly different from the connotations suggested by that phrase. This is not a series of stores, all housed within a long, flat building without architectural imagination. Rather, the architectural features proposed, many of which have been suggested by the Office of Planning and Zoning and implemented, result in a building appropriate with the rural locale.

As to Mr. Gerber's suggestions, I decline to incorporate them. Quite frankly, for each suggestion offered by Mr. Gerber, a compelling

argument can be made for the existing plan. He suggests pivoting the building to face York Road. Although his logic is understandable, to do so would disrupt the scenic vista in the area and increase the building mass visible to travelers on York Road and the residents across the street. He also suggests more than one building. That scenario, if adopted, could create an unattractive, overcrowded and overwhelmed landscape. His other recommendations are likewise questionable. Many defer to matters of individual taste and aesthetics. However, on balance, I do not believe that any are appropriate in this instance. In summation, and for the reasons set forth above, I find the proposed project to be compatible with the surrounding locale. Thus, I shall approve the development plan offered in this case.

Therefore, pursuant to the zoning and development plan regulations of Baltimore County as contained within the B.C.Z.R. and Subtitle 26 of the Baltimore County Code, the advertising of the property and public hearing held thereon, the development plan shall be approved consistent with the comments contained herein and the restrictions set forth hereinafter.

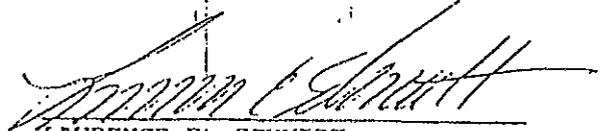
THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner and Hearing Officer for Baltimore County this 7th day of January, 1994 that the development plan for Shelley Retail Center, identified herein as Developer's Exhibit 1A, be and is hereby APPROVED, subject to the following restrictions:

- 1) Development of the subject site shall be limited to that depicted in the revised development plan identified herein as Developer's Exhibit 1A.
- 2) In accordance with the development plan comments offered by the Department of Environmental Protection and Resource Management (DEPRM), dated July 21, 1993, the Developer shall install a meter to monitor water withdrawal in the area and appropriate reports of same shall be submitted to DEPRM on a regular basis upon

which DEPRM shall be permitted to recommend and/or limit high water use activities on this site.

3) No high water volume users shall be permitted on the subject site.

Any appeal of this decision must be taken in accordance with Section 26-209 of Baltimore County Code.



LAWRENCE E. SCHMIDT
Hearing Officer
for Baltimore County

LES:bjs

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



Pet. # 2

Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

October 27, 1994

J. Carroll Holzer, Esquire
305 Washington Avenue, Suite 502
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
NE/S York Road, 300'+/- NW of Turner Crossing Road
(21405-415 York Road and 1033 Cold Bottom Road)
7th Election District - 3rd Councilmanic District
Maryland Line Area Assoc., Inc. and Dr. Richard McQuaid - Petitioners
Case No. 95-65-SPH

Dear Mr. Holzer:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been denied in part and granted in part in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lawrence E. Schmidt".

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjjs

cc: ✓ Newton A. Williams, Esquire
Nolan, Plumhoff & Williams
210 West Pennsylvania Avenue, Suite -700, Towson, Md. 21204

People's Counsel

File

RESOLUTION

Maryland Line Area Association, Inc. ASSOCIATION

RESOLVED: That at the Regular - General meeting of the Maryland Line Area Association Association held on Dec 8, 1994, it was decided by the Association that the responsibility for review and action on all zoning matters for the period Life of the Association be placed in the (Board of Directors) ~~(Zoning Committee)~~ consisting of the following members:

- Dr. Richard W. McQuaid
- Gordon Clisham
- Bruce Guthrie
- Mary Wallace
- Sandra Cooper
- William Earnshaw
- Richard Jiraneck
- Robert Leonard
- Ruth Doran

AS WITNESS our hands and seal this 28 day of February, 1995.

ATTEST:

Bruce L. Johnson
SECRETARY

Richard W. McQuaid
PRESIDENT

RESOLUTION

Maryland Line Area Association, Inc. ASSOCIATION

RESOLVED: That at the position of the Maryland Line
Area Association, Inc. Association as adopted by the (Board of
Directors) (~~Zoning Committee~~) on the zoning matter known as:

Shelley Retail Center 21405-415 York Rd
Appeal of Case No. 95-65-SPH

is that:

The use of RC5 property adjacent to
the Shelley Retail Center site and owned by
Cold Bottom Farms, Inc. is in violation of
Baltimore County Zoning Regulations if it is used
for a 10 foot non-exclusive drainage easement for
the Shelley Retail Center property

AS WITNESS our hands and seal this 28th day of
February, 1995.

ATTEST:

Maryland Line Area Association, Inc. ASSOCIATION

Bruce G. Guthrie
SECRETARY

Richard W. McQuinn
PRESIDENT

AFFIDAVIT

**STATE OF MARYLAND:
BALTIMORE COUNTY, SS:**

TO WIT:

I hereby swear upon penalty of perjury that I am currently a
duly elected member of the (Board of Directors) (~~Zoning Committee~~)
of the Maryland Line Area Association.

ATTEST:

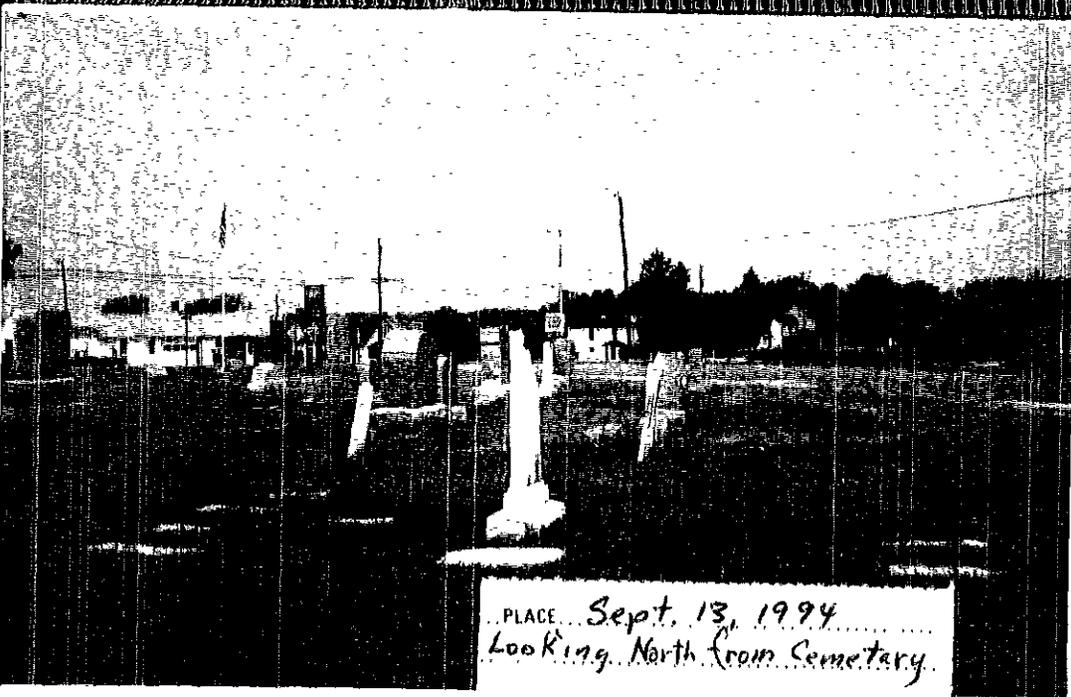
Bruce R. Zehner

SECRETARY

Richard W. McInnis

PRESIDENT

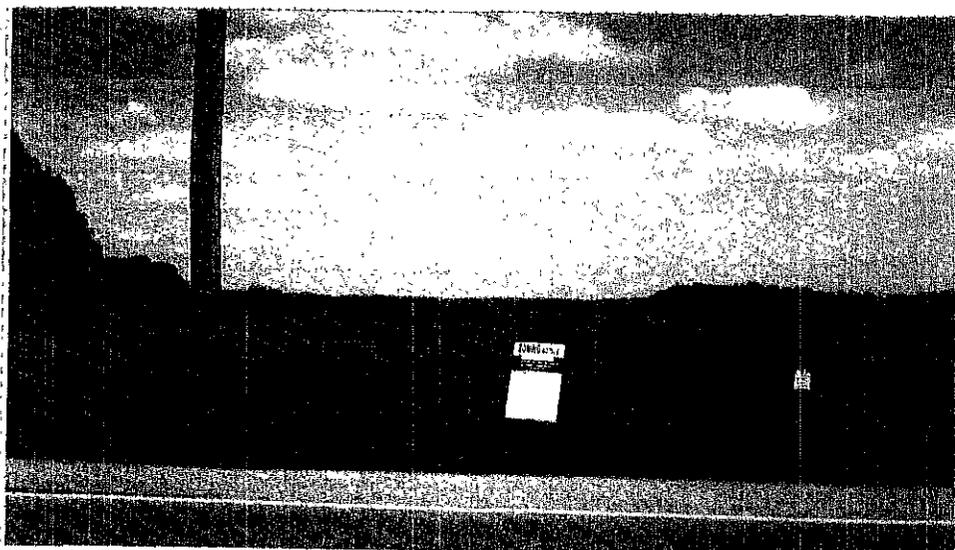
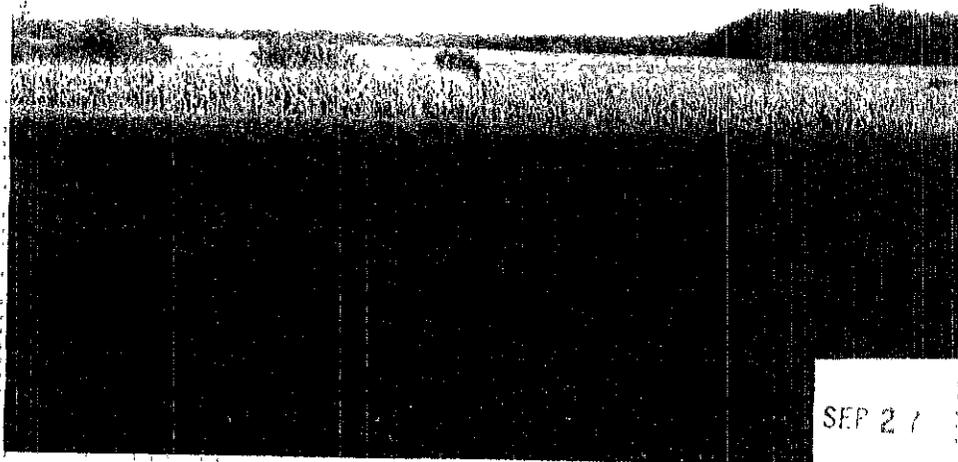
PLACE *Sept 13, 1994*
Bank Parking lot looking North East



PLACE *Sept. 13, 1994*
Looking North from Semetary.



Red # 4
DATE PURCHASED
DESCRIPTION



ZONING NOTICE

Case #: 95-65-SPH

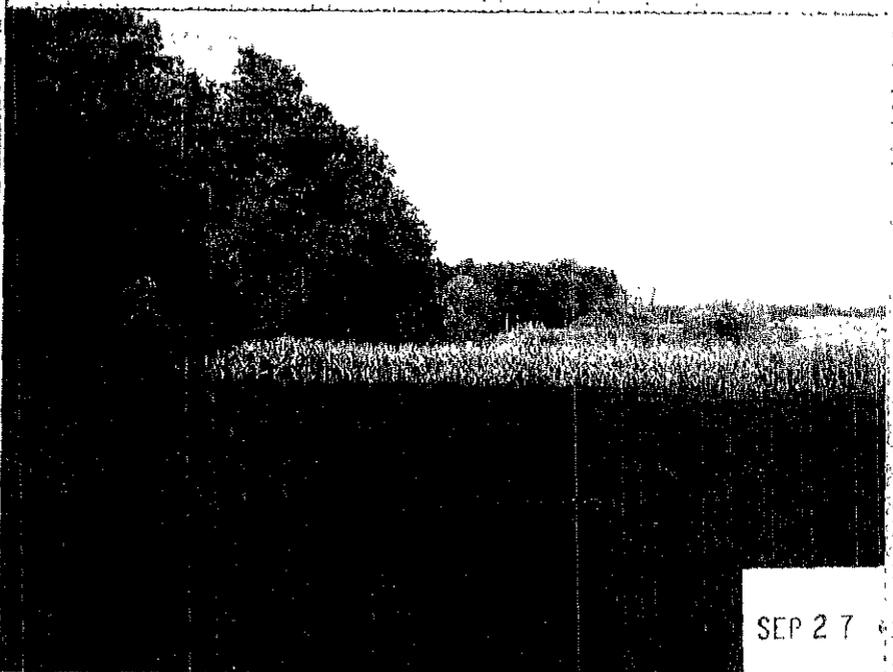
A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD.

PLACE: ROOM 104, COUNTY OFFICE BUILDING
TIME & DATE: WED, SEPT 28, 1994 AT 9:00 A.M.

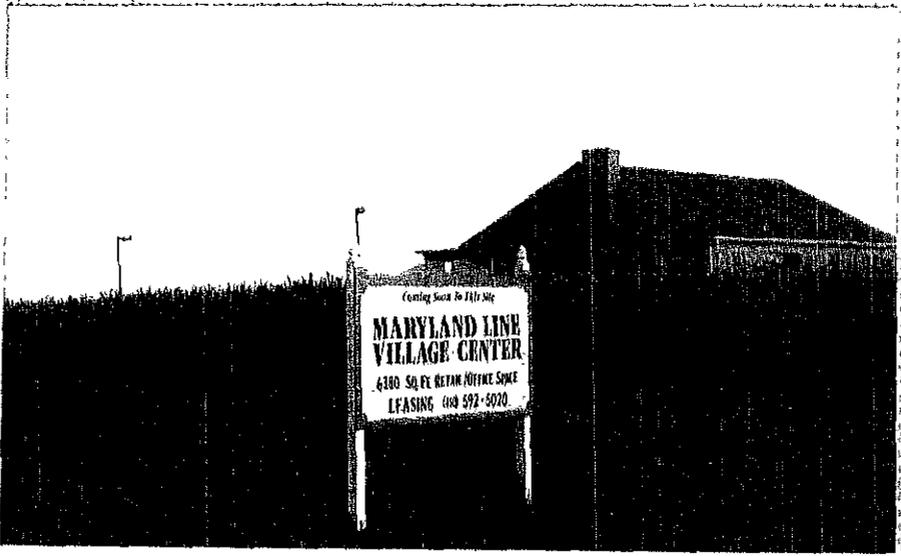
SPECIAL HEARING
TO DETERMINE WHETHER THE USE OF A... 5.2... ZONED PROPERTY
FOR A... EASEMENT TO SUPPORT... USE IS
PERMITTED BY LAW.

...PLACE: Similar Views
...Taken: Sept. 27, 1994...

SEP 27



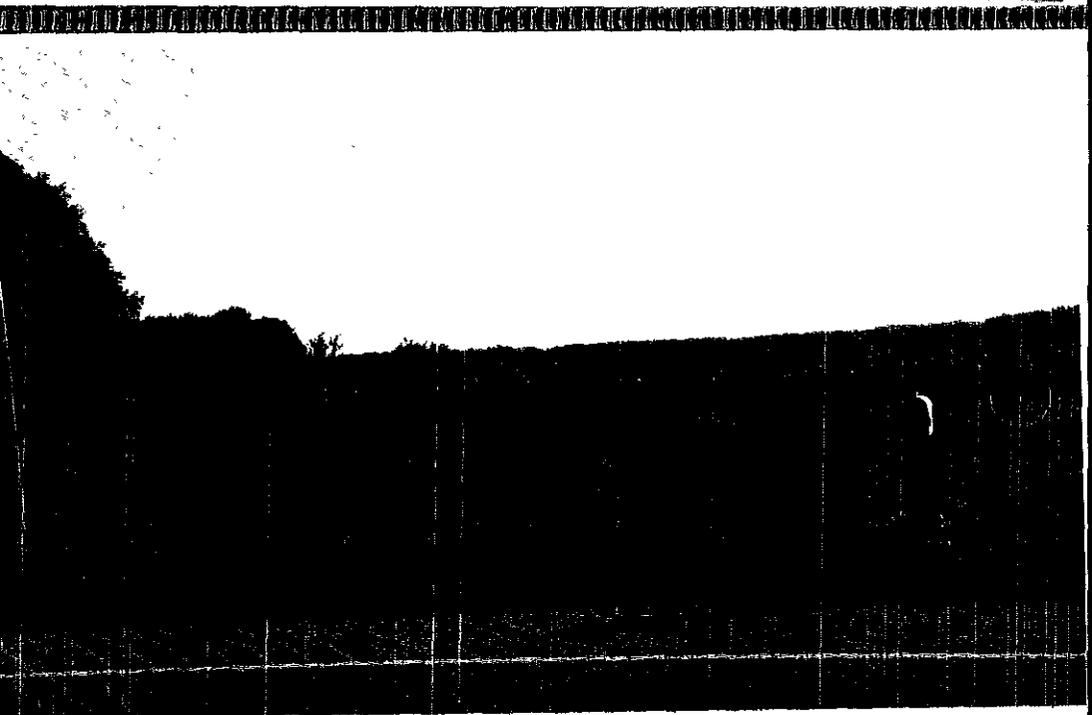
SEP 27

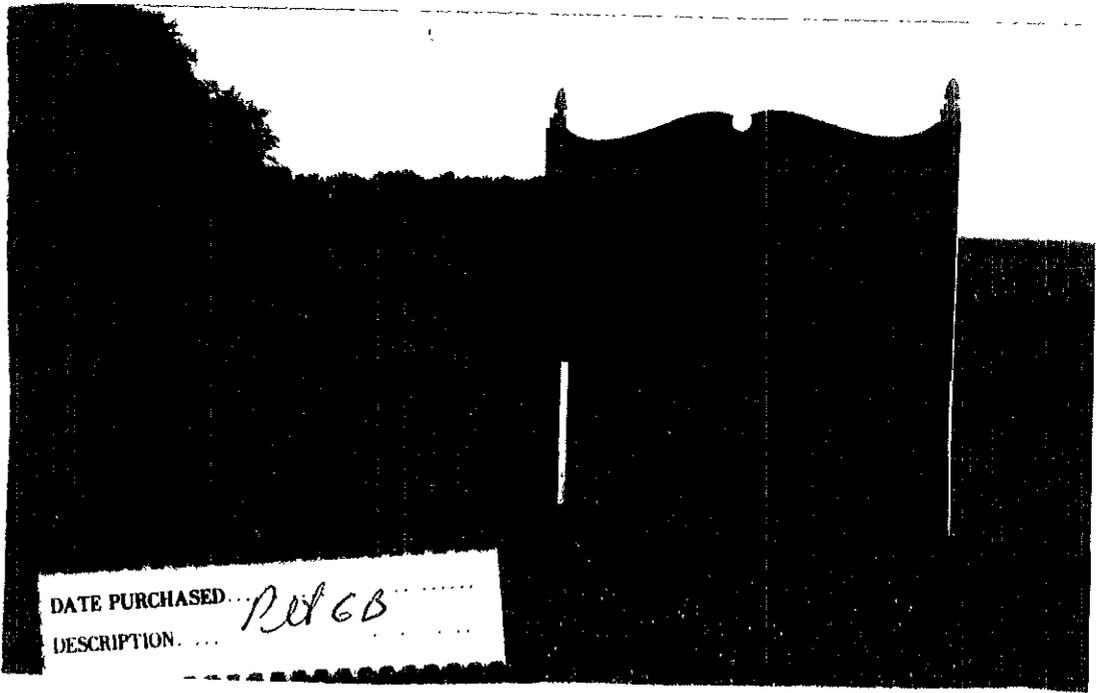


ZONING NOTICE

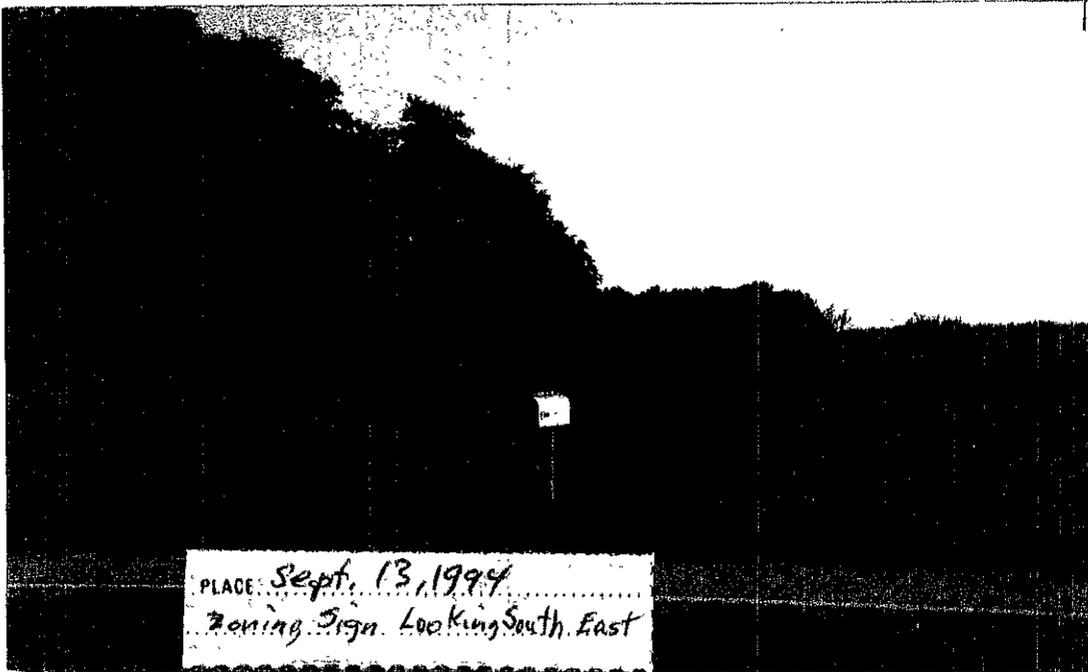
PLANNING BOARD
1000 ...
...
...

PLACE *Sept. 13, 1994*
Zoning Sign Looking South East

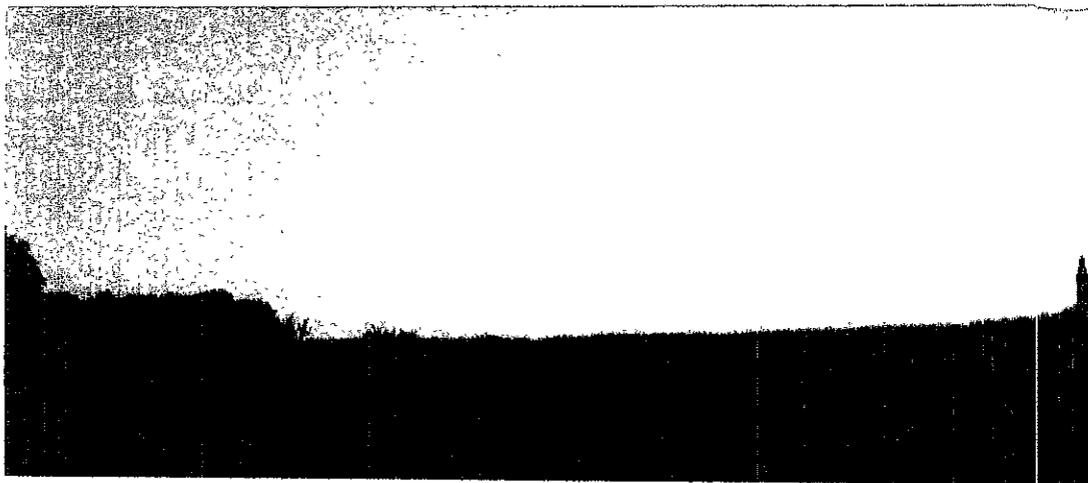




DATE PURCHASED... *Pl 68*
DESCRIPTION...



PLACE: *Sept. 13, 1994*
Zoning Sign Looking South East



01 THRU 09 INDICATES AN "APPROVAL" * 10 THRU 99 INDICATES A "DISAPPROVAL"
ENTER - NEXT APPROVAL. FF4 - ISSUE PERMIT CLEAR - MENU

APPLICATION FOR BUILDING PERMIT

PERMIT #: B214074 CONTROL # 0 DIST: 07 PREL: 01

LOCATION: 21405-15 YORK RD
SUBDIVISION: 1300 S HARRIS HILL RD
TAX ASSESSMENT #: 1700001599

OWNER'S INFORMATION
NAME: MARYLAND LINE PROPERTY, INC
ADDR: PO BOX 300 HUNKUN, MD 21111

Pet. Ex. 5

APPLICANT INFORMATION
NAME: PAUL W RUTZLER
COMPANY: TAMARACK CONST CO
ADDR: PO BOX 228
ADDR2: GLENARM, MD 21057
PHONE #: 592-5020 LICENSE #:

Paul G

NOTES
DMH/JB
ADDITIONAL \$58.00 PD-ESA251784-2/9/94-1B

TRACT: BLOCK:
PLANS: CONST 3 PLOT 8 R PLAN 0 DATA 5 ELEC YES PLUM YES
TENANT:
CONTR: TAMARACK CONST CO
ENGR: PEEK-SMITH, INC
SELLER:
WORK: CONST MULTI-TENANT RETAIL BUILDING W/COVERED
FRONT SIDE PORCH. 53' 8" X 146' 8" X 27' = 7377SF.

PROPOSED USE: RETAIL BLDG
EXISTING USE: VACANT

BLDG. CODE: BOLC CODE
RESIDENTIAL CATEGORY: OWNERSHIP: PRIVATELY OWNED
ESTIMATED COST OF MATERIAL AND LABOR: 300,000.00

TYPE OF IMPRV: NEW BUILDING CONSTRUCTION
USE: STORE, MERCANTILE, RESTAURANT
FOUNDATION: SLAB BASEMENT: NONE
SEWAGE: PRIV. PROPOSED WATER: PRIV. EXISTING
CONSTRUCTION: WOOD FRAME PIPE: ELECTRICITY
CENTRAL AIR.

SINGLE FAMILY UNITS
TOTAL # FAMILY BEDROOMS
MULTI FAMILY UNITS
EFFICIENTLY (NO SEPARATE BEDROOMS) MULTIPLE BEDROOMS:

NO. OF 2 BEDROOMS: NO. OF 3 BEDROOMS OR MORE.
TOTAL NO. OF BEDROOMS TOTAL NO. OF APARTMENTS.

PERMIT #: B211074

DIMENSIONS - INSTALL FIXTURES

	BUILDING SIZE	LOT SIZE AND SETBACKS
GARBAGE DISP:	FLOOR: 7577	SIZE: 186.07 X 6000.00
POWDER ROOMS:	WIDTH: 55'8"	FRONT STREET:
BATHROOMS	DEPTH: 146'8"	SIDE STREET:
KITCHENS:	HEIGHT: 27'	FRONT SETB: 13.7
	STORIES: 4	SIDE SETB: 18.5'/119
LOT NOS:		SIDE STR SETB:
CORNER LOT: N		REAR SETB: 37'

ZONING INFORMATION

DISTRICT:	BLOCK
PETITION:	SECTION:
DATE:	LIDER: 000
MAP:	FOLIO: 000
	CLASS: 04

ASSESSMENTS

LAND:	0035000.00
IMPROVEMENTS:	0000000.00
TOTAL ASS.:	

PLANNING INFORMATION

MASTER PLAN AREA:	SUBSENERVED	CRITICAL AREA:
-------------------	-------------	----------------

DATE APPLIED: 09/06/94	INSPLTOR INITIALS: 07B
FEE: \$393.00	PAID: \$393.00 RECEIPT #: A231759
PAID BY: APPL	

(I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS.)

.....
COMPANY OR OWNER DATE

.....
ADDRESS

AGENT
OWNER

.....
SIGNATURE OF APPLICANT PHONE

Pet. Ex. 6

IN RE: PETITION FOR SPECIAL HEARING
SE/S Long Green Pike, 170' SW
of the c/l of Fork Road
(13523 Long Green Pike)
11th Election District
6th Councilmanic District

Long Green Valley Assoc., et al
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 93-93-SPH
*

Feb 11 1993

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing originally filed by the Long Green Valley Association, the Greater Kingsville Civic Association, and various individuals who reside near the property which is the subject of this Petition. At the beginning of the public hearing held for this case, the Greater Kingsville Civic Association withdrew as a Petitioner. Thus, the matter proceeded through the efforts of the Long Green Valley Association and those individuals previously referred to above and designated on the Petition. The Petition seeks a determination as to whether approval should be given to permit the use of adjoining property, zoned R.C. 2 and owned by Executive Auto and Paint Repair, Inc., to support a waste disposal system for the subject commercial property, known as 13523 Long Green Pike, zoned B.L.-C.R. The subject property and waste disposal system are more particularly described on Petitioner's Exhibit 2.

*Long Green Valley Assn
Greater
Kingsville*

The vast majority of zoning petitions filed in Baltimore County are submitted by or on behalf of the owner of the property which is the subject of the Petition. However, the instant case arises for consideration in a different manner. As noted above, the Petition has been filed by the local community associations and a number of interested parties as individuals. The relief which they request pertains not to a property

owned by them but located within the geographic boundaries of the Long Green Valley Association.

At the hearing held in this matter, the Petitioners were represented by J. Carroll Holzer, Esquire. The property owner, Orville Jones, was represented by John Gontrum, Esquire. The parties and their counsel appeared at the public hearing held for this case at which time testimony and evidence were taken as to the issues presented. Subsequently, counsel submitted lengthy memoranda in support of their respective positions.

FINDINGS OF FACT

As is the case with many cases which present difficult legal issues, the facts in the instant case are relatively simple and largely not in dispute. As noted above, Mr. Jones owns the subject property at 13523 Long Green Pike located near the quiet country community of Baldwin. The property is located near the intersection of Long Green Pike and Fork Road. As is the case with similar commercially hubbed rural areas in Baltimore County, the subject property serves as part of the small commercial center of a rural locale. That is, although the subject property and some abutting properties are zoned for business/commercial use, this is largely an agricultural area zoned R.C. 2. The property is approximately 1.056 acres in area, is roughly square shaped, and is improved with a commercial building.

Testimony and evidence presented was that Mr. Jones acquired the subject property in April 1987 at public auction. The building located thereon at that time was built in 1904. The building was previously known as the Long Green Hotel and existed as a hotel/general store for many years. Subsequent to his acquisition, Mr. Jones decided to raze the building and replace same with another commercial use. A new building was

constructed which now houses a High's dairy store, a dentist's office and a laundromat. Further, a small parking area is provided.

The thrust of the case relates to the septic system proposed for this site. Being rural in location, the property does not enjoy public water and sewer service. Apparently, Mr. Jones originally intended that sewage disposal for the subject property would be accomplished by way of a septic system which would be situated entirely on the property. (See Jones' Exhibit 6, letter from the State of Maryland, Department of the Environment dated July 28, 1988). Specifically, Mr. Jones intended to install a sand mound sewage disposal system. Unfortunately, however, this system was never installed. Although governmental approval had been given (see letter dated October 5, 1989 from the Baltimore County Department of Environmental Protection and Resource Management {DEPRM}), the proposed sand mound septic system was rendered unusable due to disturbance of the site by heavy equipment during construction of the new building. Thus, Mr. Jones was forced to look for an alternative to satisfy his sewage disposal needs. In fact, a stop work order was issued by Baltimore County on March 29, 1991 until a suitable alternative could be found to replace the proposed system.

After exploring the options, a suitable alternative was offered by Mr. Jones in the latter portion of 1991. Specifically, the property owner reached agreement with Baltimore County to construct a private septic system on an adjacent unimproved property, pursuant to a recorded easement reserving the property for that one use. Correspondence from the Maryland Department of Natural Resources (DNR) dated November 27, 1991, and from DEPRM, dated August 26, 1991, describes the particulars of the proposed system and the County's agreement that same is appropriate and acceptable

X to the reviewing government authorities. It is of particular note that the surrounding residents were well aware of these plans. Specifically, testimony and evidence received included a letter from the Long Green Valley Association to DEPRM dated November 25, 1991. That letter questioned the wisdom and propriety of the proposed off-site septic system. Mr. Jones, who received a copy of that letter, responded both to DEPRM and the Long Green Valley Association by way of his letter dated December 17, 1991. DEPRM likewise responded to Long Green Valley Association's concerns by way of correspondence dated January 2, 1992. Further, the record discloses correspondence from DEPRM to Ms. Charlotte Pine of the Long Green Valley Association on November 20, 1991. Based on this exchange of correspondence, it is clear that all concerned were well aware of Mr. Jones' proposed alternative. As noted in DEPRM's letter of January 2, 1992, the County's stop work order "will be rescinded upon compliance with all requirements set forth...and recordation of the necessary sewage disposal area easements in the Land Records of Baltimore County." Clearly, the Long Green Valley Association and its members were aware that the County and State had given their blessing to the proposed alternative septic system. Armed with the County's approval, Mr. Jones then went about the process of obtaining the necessary easements from the adjoining property owner, Executive Auto Paint and Repair, Inc. As noted above, this adjoining tract is zoned R.C. 2 and is unimproved.

Testimony and evidence presented was that Mr. Jones negotiated with Executive Auto Paint and Repair, Inc. and consummated the agreement to obtain the necessary easements. A deed was recorded among the Land Records of Baltimore County at Liber 9171, Page 356, evidencing that agreement. The deed provides that Mr. Jones was provided the right to con-

struct, lay and maintain a private septic system, in, on, through, and across the land owned by Executive Auto Paint and Repair, Inc. This easement was more fully described on a site plan of the subject property which was attached thereto. Apparently, the easement was not conditional. Moreover, Mr. Jones paid the sum of \$25,000 for said easement. The easement was to continue until such time as Mr. Jones' property at 13523 Long Green Pike could be serviced with a public sewer line.

Having obtained and recorded the necessary easements, and having obtained governmental approval, Mr. Jones then went about constructing the septic system. Testimony and evidence received was that the system has been substantially completed. The High's store and dentist's office are apparently now up and running.

Sept 1992  The instant case arose in approximately September 1992 when the Petitioners filed the subject Petition for Special Hearing. It is to be noted that this filing was made approximately four months after Mr. Jones executed and recorded the subject easement and over nine months after the County's exchange of correspondence with the community advising them of the County's approval of the proposed off-site sewage disposal system.

Having recited these facts, attention must now be given to the numerous issues presented herein. Those issues will be addressed in turn.

1) IS THIS CASE PROPERLY BEFORE THE ZONING COMMISSIONER?

Standing As the litigants and their counsel were no doubt well aware during their presentation of the case before me, I actively participated at the Board of Appeals' level in the case entitled United Parcel Service, Inc. v. Peoples' Counsel for Baltimore County, 93 Md. App. 59, 611 A2d 993 (1992) which is presently pending on a writ of certiorari before the Maryland Court of Appeals. Since my appointment to my present position, I am

frequently reminded of the language of my dissenting opinion in that case, the opinion of the Honorable Joseph Murphy of the Circuit Court of Maryland for Baltimore County, and the reported decision by the Court of Special Appeals of Maryland. In their memoranda, the parties in the instant case quoted the law and facts discussed in UPS and their applicability to this matter. Both sides cite this case in discussing the issue as to whether the Zoning Commissioner can properly hear this case. In considering that question, one must be mindful of the form in which the original cases were brought. The instant case is now before me as Zoning Commissioner. UPS originally reared its head for the first time in the quasi-judicial review process before the County Board of Appeals. These cases have arisen differently and are easily distinguishable. Long Green Hotel is not UPS.

Standing

The Petition brought in the instant case is properly before me pursuant to the language set forth in Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.). Therein, a broad and sweeping statement of authority is provided to the Zoning Commissioner. It is specifically provided that he "shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations..." Further on, the Section provides that such authority "shall include the right of any interested party to petition the Zoning Commissioner for a public hearing...to determine any rights whatsoever of such person and any property in Baltimore County insofar as they are affected by these regulations." As it relates to my jurisdiction under this section, the timing of the Petitioner's request is meaningless. Unlike UPS, the instant case does not come before me as an appeal or for review of a prior decision. The authority conferred in Section 500.7 of the B.C.Z.R. is broad indeed. The case is properly

before me under the proposed Petition for Special Hearing from a pure jurisdictional standpoint.

2) IS THE PROPOSED SEPTIC SYSTEM A "USE" OF LAND?

The essential issue to be addressed in this case is whether the proposed septic system can be permitted under the circumstances described above. Specifically, can a private septic system be installed on an adjoining piece of property, not owned by the property owner of the land being so served, when the subject property is zoned B.L. and the subservient property is zoned R.C. 2? Before determining this issue, a resolution of whether the proposed septic system is indeed a use is necessary.

Use "The term "use" is not defined in Section 101 of the B.C.Z.R. In such a case, the regulations require the reader to consult with the definition found in Webster's Third New International Dictionary. Therein, the term "use" is defined and enjoys a lengthy list of definitions which occupy an entire column. The definitions include "the legal enjoyment of property that consists in its employment, occupation, exercise or practice," and "the benefit in law of one or more persons, specifically, the benefit of or the profit arising from lands and tenements to which legal title is held by a person, or the act or practice of using something." Clearly, these definitions suggest a broad scope of the term "use". The property owner suggests that the proposed septic system is not a use because it is entirely underground and that the surface of the land may still be used for livestock, grazing, and similar agricultural purposes. However, this argument is too narrow in scope. Coal and diamond mining, as well as oil drilling, are all clearly uses of land, notwithstanding the fact that the specific activity entails a subterranean effort. Thus, it is clear that Mr. Jones' installation of a septic system, for the privilege of which he

paid the property owner \$25,000, constitutes a use of the Executive Auto Paint and Repair, Inc. parcel.

3) IS THE SEPTIC SYSTEM USE PERMITTED ON THE R.C.2 PARCEL OWNED BY EXECUTIVE AUTO PAINT AND REPAIR, INC.?

A great amount of testimony and legal argument was presented about this issue. The Petitioners aver that the proposed use of the property is not permitted by the B.C.Z.R. and is thus, illegal. Mr. Jones argues that the use is properly permitted under a variety of theories.

Inclusive

As is well settled, the B.C.Z.R. are inclusive; that is, only designated uses are allowed. If a particular use is not specifically delineated as permissible by right or special exception, it is not allowed. This conclusion is well settled and is stated both within the regulations and at law. Specifically, Section 102.1 of the B.C.Z.R. provides that "No land shall be used or occupied and no building or structure shall be erected, altered, located, or used except in conformity with these regulations..." (emphasis added). Further, the Appellate Court's construction of this language is clear.

Kowalski

In an early and leading case before the Court of Special Appeals, the inclusive nature of the B.C.Z.R. was discussed. (See Kowalski v. Lamar, 25 Md. App. 493, 334 A2d. 536 (1975). Therein, the Court comprehensively discussed the B.C.Z.R. and noted that, "any use other than those permitted and being carried on as of right or by special exception is prohibited." Kowalski, Page 539. Thus, it is clear that the use must be identified in the B.C.Z.R. as being permissible by right or by special exception in order to be legitimate.

uses of right

Moreover, Section 1A01.2.B of the B.C.Z.R. identifies uses permitted as of right in an R.C. 2 zone. Private septic systems are not specifi-

uses by Spec Except

cally listed in that Section. Additionally, Section 1A01.2.C, identifies uses permitted in an R.C. 2 zone by special exception. Again, a private septic system is not listed therein. Thus, by the clear meaning of the words used to describe the enumerated uses allowed by right or special exception, a private septic system (as a primary use of the property) is not permitted in an R.C. 2 zone.

Unable to locate specifically identified private septic systems within Sections 1A01.2.B or 2.C, the property owner attempts to carve a niche for the subject use under Section 1A01.2.B.5 of the B.C.Z.R. Therein, certain "utility type" uses are permitted as of right in an R.C. 2 zone. The Section permits telephone, telegraph, electric power or other lines or cable, as well as underground gas, water or sewer mains or storm drains as of right in an R.C. 2 zone. The property owner avers that this language should be expanded to not only include public utilities, but private systems as well. As stated in Mr. Jones' memoranda, individual septic system facilities serve the same purpose and function as larger, public facilities.

Although appreciative of these arguments, I believe that the property owner has improperly expanded the scope of permitted uses under Section 1A01.2.B.5 of the B.C.Z.R. Clearly, the precise terms used therein include only public utilities. It is a cardinal rule of statutory construction that the natural and ordinary import of the words used should be given to effectuate the real and actual intent of the Legislature. See State v. Fabritz, 276 Md. 416 (1975). The words of this Section, read in accordance with their clear meaning, no doubt contemplates public services and utilities will be permitted to occupy R.C. 2 zoned land. Further, although sewer mains are not defined in the B.C.Z.R., Webster's

defines "mains" as "a pipe, duct or circuit to or from which leads tributary branches of a utility system and which carries their combined flow." Thus, sewer mains are part of a larger system and clearly accommodate a public as opposed to a private service. The language in this Section is clear; only public utilities are allowed. Thus, the property owner's reliance on and attempted expansion of this Section are misplaced.

While both litigants agreed that private septic systems were not precisely identified as permitted uses in the B.C.Z.R., substantial testimony, evidence and argument was offered regarding similar cases considered by this Office, the appellate courts of this State, and Courts of other jurisdictions. A review of those authorities are helpful in determining whether a private septic system is permissible in this instance.

Both parties cite one of the few reported decisions on point with the subject case. That case arose in Stamford, Connecticut and wound its way through the appellate process to the Supreme Court of Connecticut. (See Silitschanu v. Groesbeck, 208 Conn. 312, 543 A2d. 737 (1988). In that case, a similar issue was presented. Mr. Silitschanu, and others, owned real property in Stamford that was in close proximity to property owned by Mr. Groesbeck. Mr. Silitschanu and his partners desired to construct a three-story office building on the commercially zoned land with its appurtenant septic system to be located on an adjoining residential lot. The propriety of the construction of the proposed septic system was at issue. The Supreme Court of Connecticut concluded that the septic system in fact, was a structure (use) within the local zoning code. Further, since that use was not specifically authorized, it was not permitted.

This case was referenced with favor in an unreported decision by our own Court of Special Appeals. In GLP Development v. Maryland National

Capital Park and Planning Commission (No. 1755, September term, 1989) the Court acknowledged the Silitschanu decision and found same persuasive in the case before it. As were the facts in Silitschanu and the instant case, the property owner in the GLP Development case owned a commercially zoned tract which was proposed for development with commercial buildings, a septic system tank, parking and driveways. An adjoining parcel, zoned Rural-Cluster, was proposed to house the underground septic field consisting of filtering pipes for sewage disposal. The Court of Special Appeals affirmed the decision of the local planning board and concluded that the residentially zoned land could not be used for commercial purposes.

The Court in the GLP Development case also referenced the Court of Appeals' decision in Leimbach Construction Company v. City of Baltimore, 257 Md. 635 (1970). In this case, the Court of Appeals affirmed the judgment of the lower court which disallowed a commercial use on residentially zoned property. In that instance, the property owner proposed construction of a driveway over residential land to service the commercial property. In Leimbach, the Court concluded that said use was impermissible.

Thus, it appears that the uniform appellate decisions cited above, as applied to the instant case, would prohibit Mr. Jones' private septic field in his neighbor's R.C. 2 property.

Notwithstanding the absence of this particular use in the B.C.Z.R., and the apparent unanimity of the appellate decisions referenced above prohibiting said use, the property owner submits yet another argument to support its claim that the use is permitted. This argument centers upon the claim that the proposed septic system is accessory to the commercial development and should therefore be permitted. As authority for this proposition, Mr. Jones cites the prior practices and decisions of the

Zoning Office and similar agencies of Baltimore County. As to DEPRM's practices in the past, they cannot be considered authoritative or binding upon me. There appears no doubt that in certain other instances, DEPRM has approved arrangements which allow storm water management systems and similar uses on adjacent properties to serve an abutting commercial development. There is no doubt that this practice may be sound for environmental purposes. In fact, it appears in the instant case that Mr. Jones' solution to his septic disposal woes is appropriate. The proposed off-site septic system has been approved by both the Maryland Department of Natural Resources (DNR) as well as Baltimore County's Department of Environmental Protection and Resource Management (DEPRM). From a technical environmental standpoint, the proposed system may be the most proper alternative. However, the fact that it works from a DEPRM standpoint and that similar practices have been employed at other locations in Baltimore County does not impact the issue before me. As I see it, this is a case of first impression presenting a novel question before this Office. Whether DEPRM or the Office of Planning and Zoning or other County agencies believe this to be a good approach is not persuasive; rather, the issue is presented in the context of a permitted use pursuant to the purview of the B.C.Z.R.

Nonetheless, there are similar cases which have been adjudged by this Office. Although not precedent, prior construction of the B.C.Z.R. by past Zoning Commissioner's is helpful. Two such cases were presented for my review and examination, namely, In Re: Marris B. Langford, et al, Case No. 85-321-SPH, and In Re: Walter Windsor, Case No. 85-326-XSPH. I have reviewed both cases thoroughly. Well reasoned and comprehensive opinions were offered in both instances by then Zoning Commissioner Arnold Jablon. In both cases, the Petitioner owned a commercial property and an

adjacent residential tract. In Windsor, the Petitioner desired placement of a storm water management pond on a D.R. 3.5 zoned property to serve an adjacent R.O. tract. In Langford, the Petitioner proposed to construct a Class C office building on an O-1 parcel with the storm water management pond serving said building on the D.R. 2 zoned portion of the site. In both instances, Commissioner Jablon approved the proposed use. He determined that the proposed use was proper as an accessory use. Mr. Jones urges that I adopt the same course in this case.

Accessory uses are defined in Section 101 of the B.C.Z.R. Therein, the term is defined as "A use or structure which: a) is customarily incident, subordinate to and serves a principal use and structure; b) is subordinate in area, extent or purpose to the principal use or structure; c) is located on the same lot as the principal use or structure served; and, d) contributes to the comfort, convenience and necessity of occupants, business or industry in the principal use or structure served." Clearly, the proposed septic system complies with subsections (a), (b) and (d) of the definition. That is, the septic system is there only to serve the commercial use on the Jones' tract, is subordinate to same, and contributes to the comfort, convenience and necessity of the business located thereon. The problem for Mr. Jones is whether the use complies with subsection (c) which requires that same be located on the same lot.

Helix
I considered a similar issue in a prior zoning case entitled In Re: Helix Health System, Case No. 92-186-SPH. Therein, I considered whether two hospitals located at opposite ends of the County, could share an incinerator located on one of the hospital's campuses. I concluded that said incinerator use, although accessory to the hospital on whose property the incinerator was located, could not be used as an accessory use to the

other hospital. That is, in that the incinerator was not located on the same lot as the principal use or structure served, it could not be accessory thereto.

The same logic must be applied here. The Jones' property is clearly defined on the site plan submitted at the hearing and contained in the metes and bounds description thereof. The septic system is not located within that lot, but is located off-site. Thus, it cannot be an accessory use or structure under the plain meaning of the words set forth in the definition.

The property owner attempts to save this argument by noting the easement acquired by Mr. Jones in May, 1992. He argues that this easement, in effect, makes the adjacent strip of land owned by Executive Auto Paint and Repair, Inc. part and parcel of the same lot owned by Mr. Jones. Without delving into the nature of easements at length, I must conclude that the property owner's position here is erroneous. A lot of record is likewise defined in the B.C.Z.R. as "a parcel of land with boundaries as recorded in the Land Records of Baltimore County..." Although Mr Jones has an easement in his neighbor's property, he does not own same in fee. The easement allows him only to use a portion of the property for a permitted purpose. It does not convey title. It does not make that portion of the property conveyed the same lot as Mr. Jones' tract. Thus, for all of these reasons, the use is not accessory.

4) ARE BALTIMORE COUNTY AND/OR THE PETITIONERS ESTOPPED FROM ENFORCING A PROHIBITION OF THE USE?

I have concluded that the case is properly before me as Zoning Commissioner pursuant to the broad authority set forth in Section 500.7 of the B.C.Z.R. I have likewise concluded that the septic system is in fact

a use of the Executive Auto Paint and Repair, Inc. parcel. Further, it is not permitted as of right in the R.C. 2 zone, not allowed by special exception, does not fall within any of the definitions of such permitted or special exception uses in the B.C.Z.R., and is not accessory to the Jones' property. For all of these reasons, the proposed septic system is illegal. However, can the Petitioners or Baltimore County force a termination of the use of the system? The answer must be no.

As the recitation of the facts above makes clear, the septic system alternative proposed for the adjacent tract was not Mr. Jones' first choice in regard to development of his property. He originally proposed a septic system within the four corners of the Long Green Hotel site. Only when this system was not workable and public utilities were not available did Mr. Jones look elsewhere. Further, there has clearly been extensive governmental review of the propriety of Mr. Jones' suggested alternative. The record of the case is clear that extensive governmental reviews were undertaken before the project was approved. Further, it is clear the Petitioners were aware of this activity. The record contains copies of correspondence by and between DEPRM and the Long Green Valley Association. Despite these reviews and concerns, however, it was not until September 1992 that the instant Petition was filed. This was well after Mr. Jones had spent a significant sum to acquire an easement on the Executive Auto Paint and Repair, Inc. property and constructed the septic system. In fact, the system has now been completed and the property is being used for commercial purposes. Although I have jurisdiction to consider the issues presented, equitable estoppel prohibits the Petitioners and the County's insistence that this use be terminated. The doctrine of an equitable estoppel has been defined as "...the effect of the voluntary conduct of

the party whereby he is absolutely procluded, both at law and in equity, from asserting rights which might have otherwise existed, either of property, contract or remedy, as against another person who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse and who on his part acquires some corresponding right, either of property, contract or remedy." Salisbury Beauty Schools v. State Board, 268 Md. 32, 300 A2d 367 (1973). "Equitable estoppel operates to prevent a party from asserting his rights under a general technical rule of law, when that party has so conducted himself that it would be contrary to equity and good conscience to allow him to do so." Fitch v. Double "U" Sales Corp., 212 Md. 324, 129 A2d 93 (1957). There is no settled rule as to when equitable estoppel should be applied. However, it can be applied against municipalities. See Kent Co. Planning Inspector v. Abel, 246 Md. 395, 228 A2d. 247 (1967).

As noted above, the facts presented in the record of this case are clear regarding the ongoing review and ultimate approval of the proposed septic system by Baltimore County. The knowledge of the Petitioners in this process are also clear. Despite this knowledge and participation, neither Baltimore County nor the Petitioners objected. No Petition for Special Hearing was filed until well after the fact. There must be some sense of fundamental fairness in the interpretation and enforcement of the B.C.Z.R. Property owners in Baltimore County must be assured that if they openly consult with their neighbors and undergo the scrutiny of the State and local review process, that their actions will be upheld as permissible. Therefore, notwithstanding my conclusion that the proposed use (actually implemented use) is illegal, I cannot in good conscience penalize Mr. Jones.

based upon the facts and record presented. Thus, the Petition for Special Hearing must be denied.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the Petition for Special Hearing shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 24th day of August, 1993 that approval should be given to the use of adjoining property zoned R.C. 2 and owned by Executive Auto and Paint Repair, Inc. to support a waste disposal system for the subject commercial property, known as 13523 Long Green Pike, zoned B.L.-C.R., in accordance with Jones' Exhibit 5, and as such, the Petition for Special Hearing is hereby DENIED.


LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs



September 27, 1993

Mr. Charles Ensor
Cold Bottom Farms, Inc.
1033 Cold Bottom Rd.
Sparks, MD 21152

Gentlemen:

RE: Ten Foot, Non-Exclusive Drainage Easement for Shelley Retail Center, 21405-21415 York Road, E/S York Road, adjacent to Sparks State Bank.

I appreciate your agreement to grant Maryland Line Property, Inc., a non-exclusive ten foot drainage easement from the northeastern corner of the Maryland Line Property along the northern boundary of Cold Bottom Farms, Inc. tract running northeasterly to I-83.

Your property is described in a deed recorded among the land records of Baltimore County at Liber 6368, folio 702.

The proposed use for the non-exclusive easement shall be for a suitable outfall of storm water from the Shelley Retail Center to I-83.

It is understood that our attorneys shall draw up the more detailed Deeds of Easement and other materials.

In consideration of this letter of permission, Maryland Line Property, Inc., agrees to construct and properly maintain the said easement, which may also, of course, be used by your property for drainage and agricultural purposes.

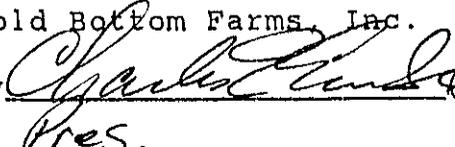
Thanking you for your agreement.

Sincerely,

A handwritten signature in black ink that reads "Randolph H. Shelley".

Randolph H. Shelley

Cold Bottom Farms, Inc.

By  (Seal)
Pres.

Petitioners - Md Line

Marjorie R. Jones 1635 Bond Rd., Parkton, Md. 21120
Theresa Lee Brown 21715 U. Liberty Rd. Parkton Md. 21120
Harold Lloyd 21053 Millers Mill Road
357-5555 Freeland, Md 21053

Ruth R. Doran 1635 Bond Rd, Parkton MD 21120
Rantha Slack Hackett 20815 West Liberty Rd, White Hall, Md. 21161
Gloria McQuinn 1501 Harris Mill Rd. Parkton 21120

reason why Judge Prendergast's determination was not correct.

[6] Petitioner finally claims that he was not represented by counsel in his motion for a new trial. The facts as found at the hearing do not bear this out. At the conclusion of his trial, petitioner informed the court that he wished to file a motion for a new trial. His court-appointed trial counsel filed the appropriate motion and then withdrew from the case. Judge Sodaro appointed George H. Rosedom, Esquire, to represent him. Mr. Rosedom interviewed his client and prepared and filed a memorandum before the Supreme Bench of Baltimore City on petitioner's behalf. Unfortunately, Mr. Rosedom died suddenly in February 1964 before the petition for new trial was heard. Milton B. Allen, Esquire, in whose office Mr. Rosedom served as a partner, handled the motion for a new trial in place of the deceased.

Application denied.



240 Md. 317

Albert L. DEEN, Jr., et al.

v.

BALTIMORE GAS AND ELECTRIC
COMPANY.

No. 264

Court of Appeals of Maryland.

Nov. 11, 1965.

Proceeding by utility for special exception for overhead electric transmission line. The Zoning Commissioner authorized special exception for area outside metropolitan district but ordered lines to be placed underground within the district, subject to certain exclusion, and appeal was taken. The county board of appeals con-

cluded that special exceptions should be granted for overhead lines along entire right-of-way except a certain portion, excluding part zoned for manufacturing, and company appealed. The Circuit Court for Baltimore County, W. Albert Menchine, J., ordered case remanded for passage of appropriate order granting special exception for the entire length of the route, and protestants appealed. The Court of Appeals, Marbury, J., held that portion of board's order requiring electric transmission lines to be placed underground was not arbitrary or capricious in view of clear support for board's conclusion of law by testimony of county director of planning and by real estate expert.

Reversed in part and modified to conform to order of the county board; as modified, affirmed.

1. Zoning ⚡539

Portion of county board of appeals' order requiring electric transmission lines to be placed underground was not arbitrary or capricious in view of clear support for board's conclusion of law by testimony of county director of planning and by real estate expert.

2. Zoning ⚡646

Circuit court should have looked at all the facts to see if conclusion reached by county board of appeals with regard to granting special exception for overhead electric transmission line was justified rather than with question whether reasons set out in board's opinion supported conclusions of law drawn therefrom.

3. Zoning ⚡504

County board of appeals was duty bound to consider 100 foot setback requirement safety factor in determining whether to grant special exception for placement of electric transmission line above ground on poles which would vary in height from 60 to 90 feet.

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4. Zoning ◊499

Zoning regulations to effect that structures in manufacturing, light zone shall be no closer than 125 feet to nearest boundary of abutting residential zone were designed to protect residential areas from close proximity to manufacturing type buildings and did not permit county board of appeals to order utility to place electric transmission line underground in manufacturing zone abutting residential zone.

5. Zoning ◊542

Where county board of appeals considered disruptive effect breakdown of underground electric transmission line might have on traffic on highway the line would cross as compared to ease of repairing an overhead line, board did not ignore regulation listing crossing of much traveled thoroughfares as matter to consider in granting special exception for overhead lines, but board balanced that regulation against regulation dealing with public health, safety, or general welfare.

6. Zoning ◊539

Evidence supported finding of county board of appeals that crossing of well traveled highways by overhead electric transmission line rather than underground line would be safest and most practical way, considering serious traffic disruption in case of repairs necessitated by breakdown or interruption of service if the line were underground and comparative ease of repairing overhead lines, in case wherein utility sought special exception for overhead line.

7. Zoning ◊535

Future effects overhead high tension wires would have on health, safety, and general welfare of locality which was rural and not serviced by public sewer or water facilities was irrelevant to whether special exception should be granted to permit utility to maintain overhead electric transmission lines, in absence of evidence to show

that the effect would be different from that on any other rural area.

8. Zoning ◊535

Impairment of use of neighboring property as result of granting requested special exception for overhead electric transmission line was proper factor for county board of appeals to consider under regulations stating that the use must be needed for proper rendition of public utilities service and location should not seriously impair use of neighboring property.

9. Zoning ◊502

County board of appeals was not arbitrary or capricious in failing to find that proposed overhead electric transmission lines would seriously impair use of neighboring land in view of evidence showing that proposed line, for which special exception was sought, would be of more harmonious appearance than could be hoped for from any other route.

10. Zoning ◊743

In absence of cross appeal by utility seeking special exception for overhead electric transmission line from order granting special exception for the line for a certain area, question whether certain provisions of zoning regulations authorized overhead construction there without special exception, was not properly before reviewing court.

Richard A. Reid, Towson (Royston, Mueller, Thomas & McLean, Towson, on the brief), for appellants.

E. Scott Moore, County Sol., Walter R. Haile, Deputy County Sol., and Harris James George, Asst. County Sol., Towson, on the brief, amici curiae brief filed by Baltimore County, Md.

James H. Cook, Towson (William Baxter and Paul S. Clarkson, Baltimore, on the brief), for appellee.

Before PRESCOTT, C. J., and HAMMOND, HORNEY, MARBURY, and OPPENHEIMER, JJ.

MARBURY, Judge.

The issue involved in this case is whether or not the Baltimore Gas and Electric Company, appellee, will be allowed to place its 115,000 volt (115-kv) transmission line above ground on dodecahedral steel poles throughout its right-of-way from Summerfield to the East Towson substation in Baltimore County. The right-of-way runs for a distance of 5.1 miles and is, with a few exceptions, that property formerly used by the Maryland and Pennsylvania Railroad. Under the zoning ordinances of Baltimore County the Company was required to apply for a special exception in order to construct its high voltage transmission lines above ground. No special exception was needed to place such lines below the surface of the ground. Pursuant to the Baltimore County Zoning Regulations, the Company filed a petition for a special exception with the County Zoning Commissioner in November 1962 asking for a special exception to permit construction of the lines above ground along the entire right-of-way. The appellants herein, and the protestants before the Zoning Commissioner, are owners of property along the five mile right-of-way. These property owners admit that the new line is needed in order to adequately supply the electric power needs of this part of Baltimore County. They maintain that the transmission lines should be placed underground because the proposed above ground structures would decrease property values inasmuch as they would be unsightly and also would be inimical to the health and safety of those who live nearby or who would travel on the highways over which the lines would be strung. On the other hand, the Company does not want to be required to construct the lines underground because underground construction is a great deal more expensive and in turn would have to be reflected in their consumer rates.

The right-of-way over which the Company proposed to place the transmission lines can be conveniently divided into three sections. The first section is from the East Towson substation easterly to Lot 34, Section 2 in the Cromwell Heights development. This section is within the Metropolitan District of Baltimore County, which is a term used to describe the area of the county serviced by sewer and water. In order for a public utility to obtain a special exception within the Metropolitan District, the Zoning Regulations require that Section 502, and the additional provisions of Section 411, must be met. Within this first section the right-of-way runs for a distance of 5,385.6 feet and the proposed high tension lines would cross Goucher Boulevard and Joppa Road, which are heavily traveled highways; would pass through a heavily built-up residential section of Towson; and also through areas which are zoned M. L. for light manufacturing. The second segment of this right-of-way for which a special exception was requested runs from Lot 34 in Cromwell Heights easterly and then northerly to the easternmost terminus of the Metropolitan District line. It is 6,177.6 feet in length; would cross over both the Loch Raven Boulevard and the Baltimore County Beltway; and would pass through a suburban area. The entire length of this second segment lies within the Metropolitan District. The third section, over which the proposed transmission lines would run, extends from the Metropolitan District line northerly to Summerfield, a distance of 15,364.8 feet. At Summerfield the Company's plan is for the transmission line to connect with a ring line, which is somewhat of an electric power beltway encircling Baltimore City some ten to fifteen miles in radius from the center of the City, a part of which is in Baltimore County. This last segment of the proposed line runs through an area which is presently rural.

After a hearing, the Zoning Commissioner authorized the special exception the Company requested for the area outside the Metropolitan District, i. e., that area de-

scribed as section three above. Within the Metropolitan District the Commissioner ordered that the transmission lines be placed underground "excluding that portion of the right-of-way in Towson, subject to the Redevelopment and Rehabilitation Commission (approximately 370 feet) and excluding the Manufacturing Zone, * * *."

The Company appealed so much of the Zoning Commissioner's decision as required it to place any of its transmission lines underground to the County Board of Appeals of Baltimore County, and pursuant to Section 501.6 of the Zoning Regulations a hearing was held de novo. After the hearing, which lasted six days and involved a transcript of 844 pages and nearly 100 exhibits, the Board concluded that a special exception should be granted for the overhead lines along the Company's entire right-of-way except that portion which was from Lot 34 in Cromwell Heights to the East Towson substation, excluding the portions thereof which were zoned for manufacturing. From the Board's decision the Company filed an appeal to the Circuit Court for Baltimore County from that portion of the order which denied the special exception for above ground construction in that area where it ordered the lines to be placed underground, and a cross appeal was filed by the protestants from so much of that order which allowed any of the wires to be strung above ground.

In the Circuit Court, Judge Menchine fully reviewed the entire record, together with memoranda filed on behalf of the respective parties and heard argument of counsel on both sides. He held that the finding of facts by the Board did not support its conclusions of law in regard to that portion of its decision which required the transmission lines to be placed underground, and as a result he ordered that the case be remanded to the Board for the passage of an appropriate order granting the special exception for the construction of the power line upon dodecahedral steel poles for the entire length of the route covered by the

Company's petition. The protestants then noted this appeal.

I

[1] First to be considered on this appeal is whether or not the Circuit Court was correct in reversing that portion of the Board's order which required the transmission lines to be placed underground from Lot 34 in Cromwell Heights to the East Towson substation, except in manufacturing zones. In regard to that portion of the Board's order, Judge Menchine held that its findings of fact did not support its conclusions of law and thus the decision was arbitrary and capricious in the legal sense, relying upon *Montgomery County v. Merlands Club*, 202 Md. 279, 96 A.2d 261. In fairness to the lower court, it should be pointed out that clarity and internal consistency were not conspicuous attributes of the Board's written opinion. However, a reading of that entire opinion makes it apparent to us that the Board adopted for its findings of fact the testimony of Mr. Gavrelis, Director of Planning for Baltimore County, which was supported by that of a real estate expert. Their testimony clearly supported the Board's conclusion of law and for this reason such a conclusion was not arbitrary or capricious.

[2] Although Mr. Gavrelis' testimony was not specifically adopted by the Board, we feel that the Circuit Court, in its review of the decision of this quasi legislative body, should have concerned itself with the question considered in *Board of County Com'rs for Prince George's County v. Meltzer*, 239 Md. 144, 153, 210 A.2d 505, and not with the question of whether the reasons set out in the opinion supported the conclusions of law drawn therefrom. In *Meltzer* we found the test to be: "whether a reasoning mind could reasonably have reached, after a fair consideration of the entire record, the conclusion that the Council [Board] did, or, in other words, was its action clearly erroneous and therefore not fairly debatable." Thus, the court should

have looked at all the facts to see if the conclusion reached by the Board was justified.

Section 411.3 of the Baltimore County Zoning Regulations specifically sets out the seven factors which are proper for the Board's consideration in determining whether our transmission lines carrying more than 35,000 volts shall be placed underground. Section 411.3 a (7) states as one of these factors to be considered: "Any other matter or thing deemed by him [Zoning Commissioner] or them [Board] to be material in connection with the public health, safety or general welfare." The Planning Commission report, introduced into evidence by the testimony of Mr. Gavrelis, used the following language in reference to that part of the right-of-way which the Board ordered underground:

"A 100 foot setback is sought between any new residential improvement in new developments and the edge of a high voltage transmission line right of way. Although arbitrary, the extra setback attempts to temper any adverse effect of the power line by extra distance. Examination of land use data indicates that all of the houses on the north side of Brook Road in the Greenbrier Subdivisions do not conform to this standard nor do all of the dwellings in the Cromwell Heights Subdivision. The Planning staff recommends therefore, that in order best to comply with the health, safety or general welfare that that portion of the transmission lines westerly from a point more or less at Lot 34, Section 2—Cromwell Heights, be placed underground to the terminus in East Towson."

[3] As to the relationship between safety and the 100 foot setback requirement, Mr. Gavrelis testified that the 100 foot zone was established to insure against the possibility of home damage in the event one of the poles carrying high tension wires should fall. The proposed poles will vary in height

from 60 to 90 feet and will have crossarms extending 11 feet. The uncontroverted evidence before the Board indicated that high voltage lines have, on occasion, come down in other parts of the country. When the lines fall they remain energized for a fraction of a second after they strike the ground and could thus start a fire if they should come in contact with a combustible substance. In addition, it was undisputed that lines similar to the proposed ones have sagged in close proximity to the ground as the result of an accumulation of ice, snow or sleet, or as the result of a defective tower. Under such circumstances the circuit breakers would not work, since the line would not be grounded, and would thus present a hazard to any person coming in contact therewith. Given the weight of the proposed poles, and the chance that falling lines could start a fire which might spread to homes, we think that a reasoning mind could have found a substantial connection between the 100 foot setback requirement and the health, safety and welfare of the people living in close proximity to the high tension wires. The Board was duty bound to consider this factor of safety in determining whether to grant a special exception. In addition to his testimony as to safety, Mr. Gavrelis testified that the presence of above ground high tension wires has a tendency to decrease property values in residential areas. As a planning expert Mr. Gavrelis opined that the 100 foot setback requirement minimized the deflating effect which above ground high tension wires has on land values. Such economic consequences were properly considered by the Board pursuant to Section 411.3 a (6). Besides Mr. Gavrelis, other witnesses, including Hugh E. Gelston, a real estate expert, testified before the Board that in their opinion high tension wires in this area would adversely affect property values. To rebut this, the Company produced Mr. Magee and Mr. Heinmuller, both expert real estate appraisers, who testified that in their opinions overhead lines do not have an adverse effect on property values. Because of the evi-

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dence as to safety, coupled with the conclusions which reasonable men could have gleaned from the conflicting testimony as to the effect of high tension wires on nearby property values, we conclude that under the test used in Meltzer, the Board was not clearly erroneous when, pursuant to the authority given the Board under Section 411.3, it ordered these high tension wires underground. For that reason this portion of the Board's findings we consider to be supported by competent, material and substantial evidence upon the whole record, and, therefore, was not arbitrary and capricious.

II

The protestants next contend that within the *manufacturing zones* lying between Lot 34, Cromwell Heights and the East Towson substation, the Board should have ordered the lines to be placed underground. Why the Board did not so order becomes apparent from the clear language of Section 411.3:

"Electric light and power transmission lines carrying more than 35,000 volts shall be governed by the following principles, standards, rules, conditions and safeguards (in addition to the foregoing):

"a. For the purposes of the control of the location and construction of such electric light and power transmission lines, there is hereby created an additional zone which shall conform to the present or future boundaries of the Metropolitan District of Baltimore County and be known as the Metropolitan Zone. Within the said Metropolitan Zone, but excluding *Manufacturing Zones* therein, the Zoning Commissioner or the County Board of Appeals, upon appeal, shall have the power to require that such electric light and power transmission lines or portions thereof be located underground in cables or conduits.

"In the exercise of such power, the Zoning Commissioner and the County Board of Appeals, upon appeal, shall consider and be guided by the following factors and standards:" (Emphasis supplied.)

Then follows the list of the seven considerations previously referred to in this opinion.

[4] From the above language it would seem that the Board was given no power to order a public utility to place its high tension wires underground within that part of the Metropolitan District which is zoned for manufacturing. To circumvent this section of the Zoning Regulations, appellants cite Section 255.1 of those regulations dealing with manufacturing zones, which reads in pertinent part as follows:

"M. L. Zone—Manufacturing, Light

"Whenever an M. L. Zone abuts or lies across the street from a residential zone * * * the use, height, and area regulations applicable to any part of the M. L. Zone which is within 100 feet of said residential zone * * * shall be those listed in Sections * * * 243 of these regulations. * * *"

Section 243.4 of the Zoning Regulations states:

"Proximity of Structures to Residential Zones—No building or other structure shall be closer than 125 feet at any point to the nearest boundary line of a residential zone."

Appellants' position is that these sections read together impose a 100 to 125 feet (depending on how one interprets the statute) buffer zone between residential and manufacturing areas in which no public utility poles may be constructed because such poles fit within the definition of "structure." Appellants assert that these regulations as applied to the instant case preclude above ground construction in the manufacturing zones of the Cromwell Heights to Towson substation portion of the right-of-way be-

cause in this area there is never the supposedly requisite 100 to 125 feet buffer. By construing the regulations in this manner the appellants lose sight of the fact that the regulations referred to were designed to protect the adjacent residential areas from being in close proximity to manufacturing-type buildings, or, in other words, uses which are normally permitted only in manufacturing zones of the Metropolitan District. To apply these area regulations in the manufacturing zones to structures such as utility poles which are permitted uses, by special exception, in residential areas cannot be sensibly supported, as will be demonstrated below.

It is admitted by the appellants that the proposed 115-kv overhead line is a permitted use, by special exception, in all residential zones traversed by the line en route to and through a manufacturing zone. Obviously, as the line approaches the manufacturing zone, the engineering design of the line might well require that a pole be erected on residentially zoned land within 10 or 15 feet of an adjacent manufacturing zone boundary. There can be no logical justification for requiring the next pole, which would be in the manufacturing zone, to be set back a specific distance from the adjacent residential zone from which and through which the poles have been placed. Such an anomalous result could not have been intended by the legislative body which specifically withheld from the County Board of Appeals the power to order that transmission lines through manufacturing districts be placed underground. Since both Sections 255.1 and 243.4 appear under the title "Manufacturing," we feel justified in avoiding the anomaly which arises from the appellants' construction by finding that the legislative intent was to require that manufacturing buildings or structures be set back 100 or 125 feet for the benefit of adjacent residential property owners. Thus, Section 243.4 should be construed in a situation such as that which presents itself in the instant case as meaning: "* * * No [manufacturing] building or other [manu-

facturing] structure shall be closer than 125 feet at any point to the nearest boundary line of a residential zone." Such a construction gives a logical meaning to all of the cited sections when construed together and we therefore adopt it. Since utility poles are not in a true sense manufacturing structures, we conclude the Board was correct in not ordering underground high voltage transmission lines which pass through manufacturing zones within the Cromwell Heights to East Towson substation portion of the Company's right-of-way.

III

We now consider that portion of the Company's right-of-way which lies within the Metropolitan Zone and which both the Board and the Circuit Court agreed should be constructed above ground, i. e., from Cromwell Heights to the easternmost terminus of the Metropolitan line. The Board, appellants contend, "ignored the importance of Section 411.3 a (1)" which lists for consideration in the grant of a special exception for above ground high tension wires "the crossing of much traveled highways or streets." Within this portion of the Company's right-of-way this factor is said to be of significance since the line will cross "two of the most heavily traveled highways or streets in Baltimore County" (Baltimore County Beltway and Loch Raven Boulevard). The appellants argue that the failure of the Board to give effect to this factor makes the Board's grant of a special exception arbitrary and capricious and that its affirmance, by the Circuit Court on appeal, constituted reversible error.

In regard to this consideration the Board stated as its finding of fact:

"There is no serious problem involving the crossing of much traveled highways or streets with the exception of the crossing of the major highways at or near the intersection of the Beltway and Loch Raven Boulevard, and we are convinced from testimony in this case that the safest and most practical way

of crossing ways would reasons, because underground highways would eight (28) feet there were a of service would disruption of the while repairs against the crossing any possible head lines in

Implicit in the fact was the chance of one wires strung over traveler upon the by the possibility general public the disruption of underground

[5,6] The importance of Section chose to balance equally relevant with matter general welfare disruptive effects ground voltage of highway traffic ment that the cables would be underground, in that there was to support the and the conclusion being the case, in affirming the exception for a high voltage pany's right-of-way well Heights a of the Metro

[7] Lastly, Board's decision

of crossing these well traveled highways would be overhead, among other reasons, because it was testified that an underground installation crossing these highways would be as much as twenty-eight (28) feet underground which if there were a breakdown or interruption of service would cause a serious disruption of traffic on these highways while repairs were under way, as against the comparative ease of repairing any possible breakdown of overhead lines in the same location."

Implicit in the above quoted finding of fact was the conclusion that the relative chance of one of these poles, or of the wires strung on them, falling and injuring a traveler upon the highway was outweighed by the possibility of inconvenience to the general public which might be occasioned by the disruption necessitated in the repairing of underground lines.

[5,6] The Board did not ignore the importance of Section 411.3 a (1) but instead chose to balance that provision against the equally relevant Section 411.3 a (7) (dealing with matters of public health, safety or general welfare) when it considered the disruptive effect a breakdown of the underground voltage line might have on the flow of highway traffic. Except for the argument that the testimony indicated that the cables would be a maximum of 16 to 18 feet underground, instead of 28 feet, we conclude that there was ample evidence in the record to support the Board's finding on this point and the conclusions drawn therefrom. This being the case, the lower court was correct in affirming the Board's grant of a special exception for above ground construction of high voltage lines throughout the Company's right-of-way lying between Cromwell Heights and the easternmost terminus of the Metropolitan line.

IV

[7] Lastly, appellants contend that the Board's decision that the line be constructed

above ground from the Metropolitan District line to Summerfield was arbitrary and capricious. It will be recalled that this portion of the Company's right-of-way traverses an area which is rural and is not serviced by either public sewer or water facilities. Sections 502 and 411.1 of the Zoning Regulations apply to the grant of special exceptions in areas such as this which lie outside the Metropolitan District. Section 502.1 states that a special exception may be granted if the use requested will not "be detrimental to the health, safety, or general welfare of the locality involved." Appellants assert that it was error for the Board to fail to consider the future effects which the high tension wires would have on the health, safety and general welfare of the locality "which could be reasonably anticipated in the normal course of its development." This factor was without relevance in this case, because there was no evidence produced at the hearing which would show that the effect of high tension wires on the future health, safety and welfare of this area would be in any respect different than its effect on any other rural area. Section 502.1 implies that the effect on health, safety or general welfare must be in some sense *unique* or else a special exception could never be granted in such an area for the above ground location of high tension wires. The only evidence as to future conditions was testimony revealing the possibility of future residential development of this land but such a possibility alone does not come close to showing a future deleterious effect upon the public health, safety or general welfare.

[8,9] The appellant additionally contends that it was arbitrary and capricious for the Board to disregard the serious impairment of the use of neighboring property which would result if the special exception is granted. Although not specifically cited in appellant's brief, such a factor is proper for the Board's consideration under Section 411.1 which states: "The use must be needed for the proper rendition of the public utility service and the location thereof

shall not seriously impair the use of neighboring property." In the instant case it was uncontroverted that there is presently a need for a new transmission line to the Towson area and that the proposed line would be less disrupting and less costly than a line constructed elsewhere, since it runs largely along property which was once used as a railroad right-of-way. Moreover, the evidence shows, as found by Judge Menthine in his review of the evidence before the Board, "that the proposed line is of a more harmonious appearance than could be hoped for from any other route, for the reason that, in large part, it lies below the ridge line to the south and is screened from the view of properties lying to the north by trees." While it is true that the appellants did produce an expert, Hugh E. Gelston, who testified that the best use of this rural property would be for prestige type homes in the \$50,000 category in acre or half acre lots, and that the proposed above ground power lines would impair such a use; there was no showing that other less pretentious residential uses could not be made of this property. Thus, the Board was not arbitrary and capricious in failing to find that there would be a serious impairment of the use of this land and we, therefore, have no difficulty in concluding that such part of the order of the lower court sustaining the authorization of construction of the transmission line upon dodecahedral poles from the Metropolitan District line to Summerfield was justified.

[10] In its brief and oral argument before this Court, the Company sought to raise the issue of whether certain provisions of the Zoning Regulations authorize overhead construction throughout that portion of its route ordered underground by the Board, without the necessity of a special exception therefor. We do not deem it necessary to decide this because the Company did not file a cross appeal from the lower court's grant of a special exception for this area, and thus the question is not properly before us.

For the reasons stated such part of the order of the lower court as differs from the order of the Board of Zoning Appeals dated January 14, 1965, will be reversed and the order of the Board will be reinstated.

Order of June 17, 1965 reversed in part and modified so as to conform to the order of the County Board of Appeals of Baltimore County, of January 14, 1965, and as modified affirmed. Costs to be paid one-half by each side.



240 Md. 337

John D. CLAYTON, Jr., et ux.

v.

Lyder H. JENSEN et ux., et al.

No. 470.

Court of Appeals of Maryland.

Nov. 12, 1965.

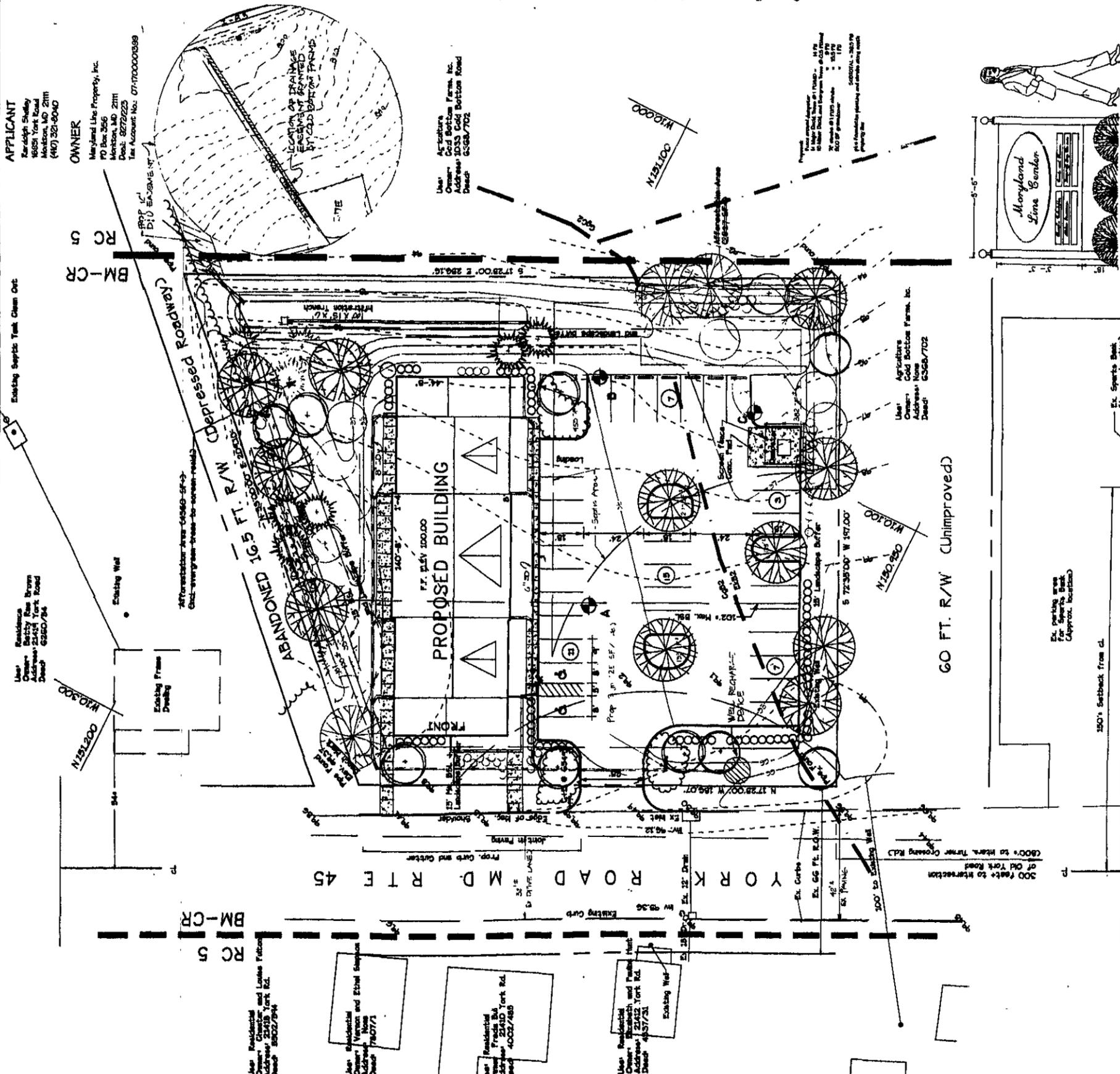
Action for damages resulting from obstruction of an easement of way. From an adverse judgment of the Circuit Court, Baltimore County, John Grason Turnbull, J., the plaintiffs appealed. The Court of Appeals, Barnes, J., held, *inter alia*, that evidence failed to rebut presumption which arose from unexplained use of right-of-way for over 20 years and established that use of driveway was an adverse use.

Reversed and new trial awarded.

1. Easements \S 5, 8(2)

To establish an easement by prescription, proof of an adverse, exclusive and uninterrupted use of the way for 20 years is necessary, and "adverse use" means use without license or permission.

See publication Words and Phrases for other judicial constructions and definitions.



NOTE

Existing well locations are field surveyed and existing house locations are approximate. Based on existing data.

EXISTING CONDITIONS NOTES

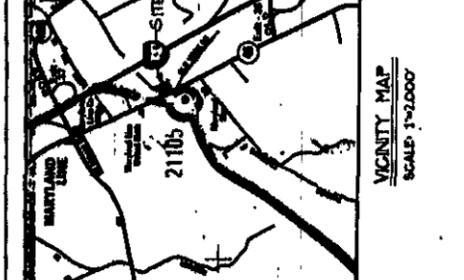
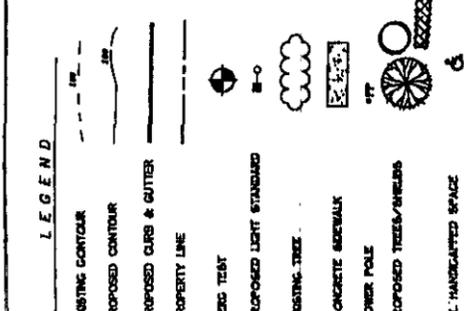
1. Election Districts: 3
2. Concomitant Districts: 3
3. Census Tract: 4071
4. National #15, Harris Mill Creek
5. Subwatershed #81 (none)
6. No Floodplains are on the Site.
7. No Existing Streams, Bodies of Water, Wetlands or Springs are on the Site.
8. The site is currently in agricultural use.
9. There are no known significant regulatory plans or orders on the site.
10. One Existing Well on the Site. A water balance report was filed and approved in 1990.
11. No Existing Surface Water on the Site.
12. There are no known existing or proposed flat or chemical storage tanks on the site or within 10 feet of the property.
13. No Existing Buildings are on the Site.
14. No Historic Buildings are on the Site.
15. There are no known Critical Areas, Archeological sites, or Hazardous Materials on the property.

SOIL LIMITATIONS CHART

SOIL	SOIL TYPE	HYDROLOGIC SOIL GROUP	HOMESITES WHO PARKING LOTS BASEMENTS	Limitations
Cy82	Dune Sand	B	Slight	Slight
E82	Elbow Gravelly Silty Loam	B	Slight	Moderate Slope

PROPOSED CONDITIONS NOTES

1. Current Zoning and Acreage:
Net = 10.0 ± BM-CR
Gross = 13.7 ± BM-CR (incl. 3.7 of York Rd Right-of-Way)
2. Density: (FAR 0.2)
Permitted = 113 Ac. x 0.2 = 22.6 SF/Ac. (9344 SF) per CE District Zoning Regulations up to Maximum of 8,800 SF (6,800 SF Max. on this floor)
3. Proposed = 6384 SF + (Proposed One story Retail/Office Complex)
4. The property as shown on the plan is held subject by the ownership shown. The developer's engineer has confirmed that no part of the gross area of this property as shown on the plan has ever been utilized, recorded or represented as family or area to support any off-site dwellings.
5. Neither Common Open Space nor Amenity Open Space is required for BM-CR.
6. Parking Calculations:
Required: Retail @ 50000 SF = 32 Spaces
Proposed: 30 Spaces including 2 handicapped
7. All parking and maneuvering areas will be paved with bituminous concrete and will be permanently sloped.
8. Paved Parking Surface
Required: 78 x 12800 SF = 865 SF
Proposed: 145 SF
9. Landscaping Calculations:
Existing:
1 Tree per 1 parking space = 5 Trees (5 TU)
925 LF of Existing Landscaping @ 1 TU/100 LF = 9.25 TU
78 LF of C.L. Landscaping @ 1 TU/100 LF = 0.78 TU
367 LF of C.L. Landscaping @ 1 TU/100 LF = 3.67 TU
SUBTOTAL = 9.70 TU
Required Front, Side and Rear setbacks shall be landscaped (RACR Sect. 258.3)
Screen Stripper



7. ADT: 6384 SF @ 861000 SF = 615 ADT's
8. Site will comply with Sections 413 and 259.0C7 of the RACR. Signs may include one freestanding sign, 25 SF in total including individual signs mounted on the building face. See Appendix A for sign specifications.
9. There are no known zoning cases related to this project.
10. The proposed development shall be designed so that it can be supported by the concrete pipe sewer (septic) and water (well) systems and will not enlarge the Metropolitan District's revenues or create a health or environmental nuisance for neighboring properties.
11. This property is subject to the Forest Conservation Act.
Required Affirmations:
7097 SF
16 Equivalent Tree Units
12. On-site lighting shall be designed to confine direct light rays within the site and to prevent reflected light rays from shining or glaring onto adjacent properties and motorway or into the path of oncoming vehicles. Security lighting shall be provided at the rear slope per BOCCA code requirements.
13. Trash will be collected by a private carrier. The dumpster shall be enclosed in a screen fence.
14. Proposed Site Address: 2405 York Road - 2415

95-65-SPH

SHELLEY RETAIL CENTER
DEVELOPMENT PLAN
SITE PROPOSAL PLAN

SCALE: 1" = 20'
DATE: 7-12-93
DRAWN BY: J.P.
PROJECT MANAGER: J.P.
DATE: 1/25/94

AS1 Peek/Smith, Inc.
300 West Independence Avenue
Baltimore, MD 21201

DATE - ISSUED FOR:
ELECTION DISTRICT: 3
ZONING: BM-CR
ZONING FILE NO.: VI-278
DEVELOPMENT PLAN REV. NO.: 93053Z
SHEET NO.: 1 of 2

63

Exh. B

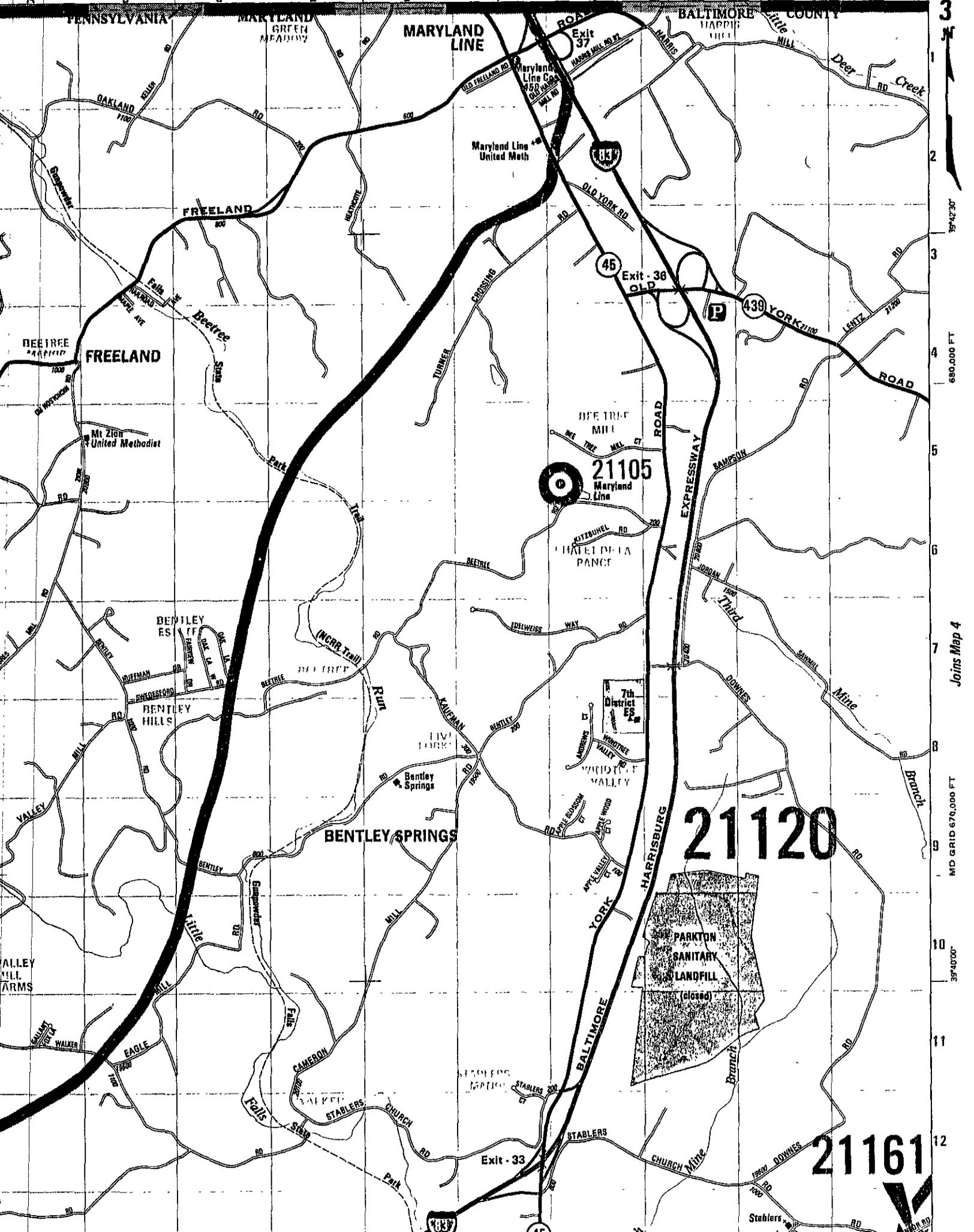
890,000 FT

See ADC's "YORK COUNTY, PA STREET MAP" For Continuation To York Pa F To York Pa

900,000 FT

P.C. EX. 1

MAP 3



39°24'30"

680,000 FT

Joins Map 4

MD GRID 676,000 FT

39°40'00"

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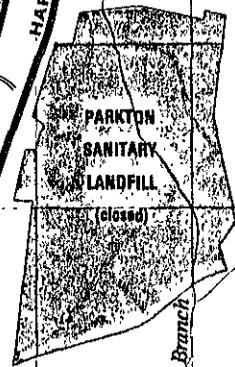
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21105 Maryland Line

21120

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8337

Baltimore County Government
Department of Environmental Protection
and Resource Management



401 Bosley Avenue
Towson, MD 21204

(410) 887-3733

October 13, 1994

Dr. and Mrs. Richard W. McQuaid
1501 Harris Mill Road
Parkton, Maryland 21120

Re: Maryland Line Village Center
(aka Shelley Retail Center)
Stormwater Management

Dear Dr. and Mrs. McQuaid:

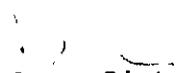
I enjoyed our October 7 meeting and want to capsulize the design requirements for the stormwater management system in the northeast corner of the site.

The proposed system will provide infiltration for water quality control, if feasible, based on the infiltration capacity of the soils. Quantity management will be provided for the 2 and 10 year storms and the stormwater management system will have a pipe control system to provide this quantity control as well as provide positive drainage for the trench.

A 15 inch pipe outfall, 450 feet long, will be constructed in a private easement on the Cold Bottom Farms, Inc. property. The pipe alignment will abut the existing private lane and will discharge adjacent to I-83. This pipe will convey all site runoff up to and including the 100 year storm.

Currently, the design plans are back with the engineer for correction. Please call me if you have any other questions.

Sincerely yours,


J. James Dieter
Director

JJD:pmf

c: Mr. Thomas L. Vidmar
Mr. J. Lawrence Pilson

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
 NE/S York Road, 300'+/- NW of * ZONING COMMISSIONER
 Turner Crossing Road * OF BALTIMORE COUNTY
 (21405-415 York Road and 1033 * Case No. 95-65-SPH
 Cold Bottom Road)
 7th Election District
 3rd Councilmanic District
 Maryland Line Area Assoc., Inc. *
 and Dr. Richard McQuaid - Petitioners

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing concerning those properties known as 21405-415 York Road and 1033 Cold Bottom Road, located in the vicinity of Maryland Line in northern Baltimore County. The Petition was filed by the Maryland Line Area Association and Dr. Richard McQuaid, individually, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) The Petitioners seek an interpretation of whether the property at 1033 Cold Bottom Road, zoned R.C. 5 and owned by Cold Bottom Farms, Inc., can be used for a 10-foot non-exclusive drainage easement for the property located adjacent thereto at 21405-415 York Road, known as the Shelley Retail Center, and owned by Maryland Line Property, Inc. The subject property and relief sought are more particularly described on the site plan submitted into evidence as Petitioner's Exhibit 1.

Appearing on behalf of the Petition were Dr. McQuaid and numerous other residents of the surrounding locale. The Petitioners were represented by J. Carroll Holzer, Esquire. Appearing as Protestants in the matter was Randolph Shelley, owner of the proposed Shelley Retail Center, through his corporation known as Maryland Line Property, Inc. Mr. Shelley and his company were represented by Newton A. Williams, Esquire.

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This case presents a number of novel issues and arises in a manner dissimilar to most zoning cases. Particularly, the Petition is not filed by either of the subject property owners, but rather by Dr. McQuaid, an area resident, and the Maryland Line Area Association, a community association opposed to the proposed development of the property at 21405-415 York Road by Maryland Line Property, Inc. That corporation proposes to develop the subject site with a 6,384 sq.ft. commercial building known as the Shelley Retail Center. The merits of this proposed development came before me within the framework of a Hearing Officer's Hearing pursuant to Section 26-206 of the Baltimore County Code. By Order issued January 7, 1994, I approved the development plan with certain restrictions. A copy of my lengthy findings of fact and conclusions of law was introduced in the instant case as Petitioner's Exhibit 2. The relevant facts set forth in that opinion are incorporated herein.

By way of background, it is to be noted that the property known as 21405-415 York Road consists of 1.1 acres zoned B.M.-C.R. This property is located in the extreme northern end of Baltimore County, adjacent to York Road (Maryland Route 45), not far from Interstate 83, and is located within the village of Maryland Line, which I described in my prior opinion as "quite old and historic in nature and in character." As I noted in that opinion, the village is a rural town center surrounded by agricultural and rural uses. To the great consternation of its residents, I also included Maryland Line within that great megalopolis which stretches from Washington D.C. to Boston, a characterization which I have learned since to regret making.

Notwithstanding the rural character of the area, the subject property is zoned B.M. (Business Major) and is located within the small

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cluster of commercial properties that comprise "downtown" Maryland Line. The Sparks State Bank is immediately adjacent to this property and the Maryland Line Inn is not far away. Mr. Shelley and his corporation propose to develop the subject site with a small commercial retail center. A single story building of 6,384 sq.ft. is proposed, approximately 140 feet long and 45 feet wide, with no basement. The building will be situated on the property in such a manner that the side of the building (or 45-foot width) will face York Road. It is expected that the subject building will house anywhere from three to six retail/service uses. Lawyers' offices, insurance agencies, and certain retail outlets are anticipated. The site will also be improved with a parking area providing 33 parking spaces, more than sufficient as required under the zoning regulations.

As noted above, the development plan case came before me pursuant to Section 26-206 of the Baltimore County Code, which prescribes and regulates the conduct of the Hearing Officer's Hearing. Therein it is required that the Hearing Officer conduct a hearing on any comments or proposed or requested condition which remains unresolved on the plan. The 20-page Order issued in this case (Petitioner's Exhibit 2) clearly summarizes the testimony and evidence offered and identifies the comments and issues which were raised at the prior hearing. My opinion and order discusses the background of this case, the property and proposed improvements, and my examination and evaluation of the issues presented. After considering all of the issues raised at that hearing, I was persuaded to approve the development plan, with restrictions.

One of the issues which was presented related to storm water management for the property at 21405-415 York Road (see page 12 of said Opinion). Originally, the Development Plan provided for an outfall of the

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Testimony was received at the original hearing regarding this alternative from Mr. Lee Dreiger of the Department of Environmental Protection and Resource Management (DEPRM). His testimony was conclusive that the Developer's modified plan was functional and would prevent storm water runoff from the property at 21405-415 York Road from impermissibly flowing onto adjacent properties.

The instant case is based on a similar issue. Specifically, the Petitioners challenge the propriety of utilizing the easement on the Cold Bottom Farms tract to support this project. They contend that utilization of the adjoining property for storm water management disposal generated by

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the Shelley parcel is impermissible pursuant to the B.C.Z.R. It is to be noted that the Cold Bottom Farms tract is zoned R.C. 5.

The facts of this case, as summarized above, are not in great dispute by the parties. However, significant differences of opinion exist as to the legal ramifications of the facts and issues raised. A discussion of these issues follows:

1) Is the Petition properly brought by Dr. Richard McQuaid and the Maryland Line Area Association when same are not owners of the subject tracts and when the owners of the tracts did not sign the Petition?

As noted earlier in this opinion, the Petition was filed pursuant to Section 500.7 of the B.C.Z.R. Therein, a broad and sweeping statement of the Zoning Commissioner's authority is provided. It is specifically stated that he "shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations..." Further on, the Section provides such authority "shall include the right of any interested party to Petition the Zoning Commissioner for a public hearing...to determine any rights whatsoever of such person and any property in Baltimore County insofar as they are affected by these regulations." The authority conferred by this language is broad indeed. The Petition need not necessarily be filed by the owner of the subject property. In my view, the broad language used by the County Council in adopting Section 500.7 is persuasive that all citizens of the County should have the opportunity to have their legitimate concerns and questions related to the regulations answered. Thus, I believe that the Petition is properly filed and that the Petitioners have the proper "standing" to bring this issue before me.

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2) Is consideration of this case precluded by the findings of fact and conclusions of law authored by me in Development Plan Case No. VII-278, regarding the proposed Shelley Retail Center for the subject tract?

This issue was highly debated by the participants and is a significant consideration in the discussion of this case. As was made clear above, development of the subject tract proceeded through the development plan approval process, including the Hearing Officer's Hearing, at which significant testimony and evidence was offered relating to the storm water management issue. No appeal was taken from my Order dated January 7, 1994 and thus, the development plan approval by this Hearing Officer is final. Therefore, the significant question must be addressed as to whether the issue presented within the Petition is precluded by res judicata or collateral estoppel.

Res judicata and collateral estoppel are two doctrines which are often quoted by litigants and addressed by the Courts of this state. However, irrespective of the frequency in which they are raised, they are misunderstood and misapplied. Both deal with the common law rule that precludes relitigation of issues and provides for a finality of judgment. The courts have long recognized the principle that litigation must terminate at some point. Litigants should not be able to seek redress ad nauseam. Although collateral estoppel and res judicata both further this stated precept, they are different concepts. In Mackall v. Zayer Corp., 293 Md. 221, 443 A2d 98 (1982), the Court recognized the distinction between res judicata and collateral estoppel when it noted "if a proceeding between parties involves the same cause of action as a previous proceeding between the same parties, the principle of res judicata applies and all

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matters actually litigated, or that could have been litigated, are conclusive in the subsequent proceeding. If a proceeding between parties does not involve the same cause of action as a previous proceeding between the same parties, the principle of collateral estoppel applies and only those facts or issues actually litigated in the previous action are conclusive in the subsequent proceeding", at page 228 (citations omitted). Thus, both doctrines relate to subsequent proceedings between the same parties. However, res judicata applies when the same cause of action which existed in a previous proceeding exists in the subsequent proceeding. In such a case, all matters actually litigated, or those that could have been litigated, are conclusive in the subsequent proceeding. Collateral estoppel on the other hand, relates to a different cause of action between the same parties. In such a situation, only those facts or issues actually litigated in the previous action are conclusive. To emphasize, two distinctions exist between these doctrines; res judicata is applied only in the same cause of action whereas collateral estoppel is not, and issues that could have been litigated are conclusively resolved in res judicata whereas, in collateral estoppel, only those issues actually litigated are resolved.

This distinction was further emphasized in Harbin v. H.E.W.S., Inc., at 56 Md. App, 72, 466 A2d 879 (1983). Therein, the Court noted "a threshold requirement for both doctrines is that the second action must be between the same parties or their privies. Res judicata applies where the two causes of action are the same. Collateral estoppel applies only to the factual issues actually determined in the first action", at page 884.

Which of these doctrines applies in this case? In answering this question, it is first noted that both the development plan hearing and the zoning hearing involve the same parties. Mr. Shelley and his corporation

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were parties in the original development plan case and are parties in the instant case, as were Dr. McQuaid and the community association. Cold Bottom Farms, Inc. is contractually privy to the matter by way of the easement agreement with Mr. Shelley's corporation.

Having determined that the parties are the same, it must then be asked: Is the cause of action presented in the instant case the same as that presented in the development plan case? The answer to this question must clearly be in the negative. Although the term "cause of action" is not a defined term in the Maryland Rules of Procedure, a definition of that phrase has been developed within the case law. Essentially, a "cause of action" is that bundle of rights by which the plaintiff, counter-plaintiff, or moving party, seeks relief against another. Causes of action may obviously be in tort, contract, or under other theories. Although helpful, the label under which a cause of action is brought, e.g. (breach of contract) is not always determinative in identifying if a second litigation encompasses a different cause of action. Rather, the test which has been developed is if the same evidence which would maintain the first action is sufficient to sustain a second action. That is, if the same evidence would be offered in both actions, then the causes of action are the same. See Wool v. Maryland National Capital Park and Planning Commission, 664 F Supp., 224 (1987), Kutzik v. Young, 730 F2d, 149 (1984), and Whitaker v. Whitaker, 484 A2d, 314 60 Md. App. 695 (1984).

In examining the issues presented in the development case and special hearing case, it is apparent that the causes of action are not the same. The cause of action in the development plan case was whether the subject development plan met all County development regulations and satisfied all County and community issues and comments. The evidence offered

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in that case related to development plan issues. The issue in the instant case is quite distinct; whether the relevant provisions of the B.C.Z.R. would permit the storm drainage easement to be located on the R.C. 5 zoned property. The evidence which need be offered and, in fact, was offered, to sustain the first cause of action and obtain approval of the development plan, is different from that necessary to resolve the issue presented in the instant zoning case. Thus, the causes of action are clearly not the same. In that the causes of action are not the same, res judicata does not apply. Thus, Mr. Shelley cannot seek the protection afforded a litigant by the res judicata doctrine and it cannot be held that the zoning issue should or could have been litigated in the previous case. Indeed, this issue was not previously addressed and whether it should have or could have been litigated makes no difference.

Thus, these cases turn on collateral estoppel. In Batson v. Shiflett, 325 Md. 684, 602 A2d 1191 (1992), the Court of Appeals identified those standards which must be considered in determining whether collateral estoppel is applicable. Noted the Court, collateral estoppel should be applied to litigation before a judicial administrative body and subsequent litigation precluded when three factors are present; namely, when the agency was acting in a judicial capacity, when the issue presented was actually litigated in the prior case, and whether the resolution was necessary to the prior disposition. In this case, the issue raised in the zoning case was never actually litigated in the prior case. Moreover, quite obviously, a determination of this issue was not necessary to the prior disposition (i.e., approval of the development plan). For these obvious reasons, collateral estoppel is not applicable and thus, this case is properly before me now.

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3) Is the storm water outfall drain proposed for the Cold Bottom Farm property a use of land permitted in the R.C. 5 zone.?

Indeed, this question is the crux of this case. Moreover, in considering this issue, both sides have referenced the decision authored by me in Case No. 93-93-SPH brought by the Long Green Valley Association regarding the Long Green Hotel in Kingsville. The cases do present similar factual scenarios.

In Long Green, the Petitioner owned a lot on Long Green Pike which had been zoned with a business use classification. Resource Conservation (R.C.) zones were located on land adjacent thereto, as is the case with the Shelley property. In Long Green, the owner of the property proposed a commercial enterprise on the business zoned tract. However, because the septic system attendant thereto could not be located on the property, the owner acquired the necessary easement to locate the septic system on his neighbor's R.C. zoned land. The local community association took issue with the legality of such an arrangement. In that case, I held that the septic system was, indeed, a use of land. I cited the definition of the term "use" in Webster's Third New International Dictionary wherein that term is defined as "The legal enjoyment of property that consists in its employment, occupation, exercise or practice" and "the benefit in law of one or more persons, specifically, the benefit or the profit arising from lands and tenements to which legal title is held by a person, or the act or practice of using something." Moreover, I noted that the term "use" is not defined in Section 101 of the B.C.Z.R. For reasons fully stated therein, I held that the septic system constituted a use of the neighboring R.C. 2 land.

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Having made that decision, I then went on to state that the B.C.Z.R. are written in the inclusive; that is, only uses permitted as of right, or by special exception, are allowed. I referenced Section 102.1 of the B.C.Z.R. as authority for that position, as well as the holding of Kowalski v. Lamar, 25 Md. App. 493, 334 A2d 536 (1975). In that case, the court comprehensively discussed the B.C.Z.R. and noted that "any use other than those permitted and being carried on as of right or by special exception is prohibited." Kowalski, page 539.

Further on in the opinion, I concluded that the septic system could not be considered as an accessory use to the commercial property. I referenced the definition of accessory uses in Section 101 of the B.C.Z.R., which requires that such accessory uses be located on the same lot as the principal use or structure served. I also incorporated the holding in a decision rendered by me entitled Helix Health System, Case No. 92-186-SPH, which comprehensively discussed the requirements for an accessory use. Indeed, my holding in that case as to the accessory use definition would be applicable here; clearly, the storm water outfall on the Cold Bottom Road property cannot, by definition, be accessory to the development of the Shelley Retail Center on the property owned by Maryland Line Property, Inc.

In determining whether the storm drain outfall is a use and whether it is permitted in the R.C. 5 zone, consideration must be given to the precise activity which encompasses the "use". Unfortunately, however, at the public hearing held in this matter, the testimony and evidence offered was less than definitive as to the actual operation of the storm water management outfall. Counsel for Mr. Shelley indicated that the plans had not yet been finalized for this operation.

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Three alternate scenarios, however, were laid out. The first would be a simple discharge of water from the Shelley property onto Cold Bottom Road at the property line. Under this scenario, storm water would be collected from the Shelley property and discharged on the property line to flow onto the Cold Bottom Farm site. The installation of level spreaders, to disperse and regulate the flow, might be employed. In such a scenario, it does not seem that such a utilization of the R.C. 5 land would constitute a use thereof. Clearly, such utilization would be of a passive nature rather than an active nature. Unlike the Long Green case, with the installation of equipment underground, the mere flow of water onto and across the land is not the use of that property. The case law is replete with discussions regarding riparian rights and it is well-settled that one downstream may not block or divert the natural flow of water to adversely affect upstream owners. In my view, the collection of water on the Shelley property and the mere discharge of same at the property line onto the Cold Bottom Farm property would not be considered a use of the Cold Bottom Farm tract. All of the cases cited within the body of my Long Green opinion related to a more active utilization of property.

A second possible scenario would be the construction of an above-ground culvert across the Cold Bottom Farm property. Is this a use of land? The answer here must be "it depends". A more definitive answer cannot be given without further knowledge by this Zoning Commissioner as to the specifics of such an outfall system. As noted above, there was no testimony and evidence offered at the hearing before me as to these specifics. Without knowing the details of such a system, it cannot be definitively stated if such would be a use of land. The development of a sophisticated series of above-ground pipes, culverts, and/or canals might well

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be considered a use of land. On the other hand, regrading of the land to create a natural culvert may not be a use. The record here is insufficient to fully answer this question.

The third alternative relates to the underground piping of storm water. In fact, subsequent to the hearing, a letter was received from the Petitioners' counsel reflecting a meeting by and between Dr. McQuaid and J. James Dieter, the Director of the Department of Environmental Protection and Resource Management (DEPRM). The introduction of this letter has not been objected to by Mr. Shelley's Counsel and thus, will be included in the case file. Mr. Dieter's letter indicates that, in fact, the exact design of the proposed system for this site has been finalized. What is proposed is a buried pipe which will extend under the surface of the Cold Bottom Farm tract from the Shelley Retail Center property to an ultimate discharge point, adjacent to I-83. Is such a system an identifiable use under the B.C.Z.R.? The answer here must be in the affirmative. The installation of an underground pipe is clearly more "active" than the mere discharge of water in the fashion described in the first scenario listed above. Is such a use permitted in the R.C. 5 zone? Likewise, this question must be answered in the affirmative. As noted above, both the B.C.Z.R. and the case law (Kowalski, *infra*) provide that only those uses permitted by special exception are permitted by the B.C.Z.R. Section 1A04.2.A of the B.C.Z.R. lists uses permitted as of right in the R.C. 5 zone. Under subsection (9) thereof, a number of uses are defined. They include "telephone, telegraph, electric power, or other similar lines or cables -- all underground; underground gas, water or sewer mains or storm drains; other underground conduits, except underground interstate and intercontinental pipe lines." (emphasis added)

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Much discussion was presented in the Long Green case about the term "sewer mains", and whether same applied to public facilities, only, or both public and private facilities. A similar discussion might be made as to storm drains and whether the Council intended public or private storm drains to be permitted. However, the question is academic, based upon language elsewhere within the statute. Specifically, "other underground conduits, except underground interstate and intercontinental pipelines" are permitted uses as of right in an R.C. 5 zone pursuant to Section 1A04.2.A.9. Webster's Third New International Dictionary defines conduit as "a natural or artificial channel through which water or other fluid passes or is conveyed." This definition clearly encompasses the use described in Mr. Dieter's letter. The storm water management outfall system to be contained within the easement purchased by Mr. Shelley on the adjoining property is an underground conduit. Moreover, all underground conduits are permitted under the statute, except international and intercontinental pipelines. Thus, based on the plain meaning of these words, the installation of an underground storm water management system as described in Mr. Dieter's letter would be a permitted use as of right.

Pursuant to the advertising, posting of the property, and public hearing on this Petition held, and for the reasons set forth herein, the relief requested in the Petition for Special Hearing is denied in part and granted in part.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 27th day of October, 1994 that the property at 1033 Cold Bottom Road, zoned R.C. 5 and owned by Cold Bottom Farms, Inc., can be used for a 10-foot non-exclusive drainage easement for the property located adjacent thereto at 21405-415 York Road, known as the Shelley Retail

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Center, and as such, the Petition for Special Hearing has been granted in part and denied in part. Specifically, the Petition is denied in that the utilization of an R.C. 5 easement on the Cold Bottom Farms tract to accept the aboveground discharge of water from the Shelley property via an underground pipe is a permitted use of land; and, the Petition is granted for additional consideration to be given, if necessary, as to an above-ground culvert or discharge system. The relief granted here is subject to the following restriction:

1) The Petitioners are hereby made aware that a 30-day appeal period from the date of this Order is in effect. Should an appeal of the decision in this matter be filed and this Order reversed, the relief granted herein shall be rescinded.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

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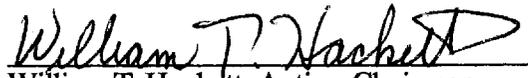
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- 1) The Owner is hereby made aware that a 30-day appeal period from the date of this Order is in effect. Should an appeal of the decision in this matter be filed and this Order reversed, the relief granted herein shall be rescinded.

Any petition for judicial review from this decision must be made in accordance with Rules 7-201 through 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


William T. Hackett, Acting Chairman


Kristine K. Howanski


S. Diane Levero

rate as on site; most systems have pipe or overlaid
flow w/ all H₂O eventually gone; occasionally have
perpetual H₂O on site

method i proposed case is plan qualifications
will take H₂O 450 ft away + out fall it to tributary of
Harris Mill Run - system is typical, easement is
not typical - no provision for this + none was
intended → never decided or conceived of but wd
frustrate intent + purpose of RC zones, wd
permit expansion into RC zones - case of 1st impressi-
on here was 1st use of septic system

1.042 - streets, tele, telegraph, all intended to be pub.
all conduits are underground, pub. or quasi pub.,
intent here was not provide use as in this case
storm H₂O mgmt facilities sometimes

CROSS

not the drafts person re Bill 98-75
P. 1 B10 of Regs. - Pub. Utility uses, Pub. utility yds -
don't think it says it consistently, tho ideally it shd be
as such a thing as priv. use, W still thinks "streets"
to pub.

storm H₂O prod. of nature → says it still contains a
certain # of pollutants, not to ° of septic system, but
not like H₂O left in natural state - might be ameliorated
by treatment but not eliminated

do not have to retain storm H₂O on site

Direct - Dr. McQuaid, Richard 1501 Harris Mill Rd
here as Pres. of Md. hwy Area Assoc. Parkton, 21120

Pet. Ex. 8 Rule 8 authoriz'n

objec'n to their proposed use - consider illegal land use -

farms have
fertilizer ←

<p>IN RE: PETITION FOR SPECIAL HEARING NE/S York Road, 300'+/- NW of Turner Crossing Road (21405-415 York Road and 1033 Cold Bottom Road) 7th Election District 3rd Councilmanic District</p> <p>Maryland Line Area Assoc., Inc. and Dr. Richard McQuaid - Petitioners</p> <p style="text-align: center;">* * * * *</p>	<p>* BEFORE THE * ZONING COMMISSIONER * OF BALTIMORE COUNTY * Case No. 95-65-SPH</p>
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cluster of commercial properties that comprise "downtown" Maryland Line. The Sparks State Bank is immediately adjacent to this property and the Maryland Line Inn is not far away. Mr. Shelley and his corporation propose to develop the subject site with a small commercial retail center. A single story building of 6,384 sq.ft. is proposed, approximately 140 feet long and 45 feet wide, with no basement. The building will be situated on the property in such a manner that the side of the building (or 45-foot width) will face York Road. It is expected that the subject building will house anywhere from three to six retail/service uses. Lawyers' offices, insurance agencies, and certain retail outlets are anticipated. The site will also be improved with a parking area providing 33 parking spaces, more than sufficient as required under the zoning regulations.

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The instant case is based on a similar issue. Specifically, the Petitioners challenge the propriety of utilizing the easement on the Cold Bottom Farms tract to support this project. They contend that utilization of the adjoining property for storm water management disposal generated by

the Shelley parcel is impermissible pursuant to the B.C.Z.R. It is to be noted that the Cold Bottom Farms tract is zoned R.C. 5.

The facts of this case, as summarized above, are not in great dispute by the parties. However, significant differences of opinion exist as to the legal ramifications of the facts and issues raised. A discussion of these issues follows:

1) Is the Petition properly brought by Dr. Richard McQuaid and the Maryland Line Area Association when same are not owners of the subject tracts and when the owners of the tracts did not sign the Petition?

As noted earlier in this opinion, the Petition was filed pursuant to Section 500.7 of the B.C.Z.R. Therein, a broad and sweeping statement of the Zoning Commissioner's authority is provided. It is specifically stated that he "shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations..." Further on, the Section provides such authority "shall include the right of any interested party to Petition the Zoning Commissioner for a public hearing...to determine any rights whatsoever of such person and any property in Baltimore County insofar as they are affected by these regulations." The authority conferred by this language is broad indeed. The Petition need not necessarily be filed by the owner of the subject property. In my view, the broad language used by the County Council in adopting Section 500.7 is persuasive that all citizens of the County should have the opportunity to have their legitimate concerns and questions related to the regulations answered. Thus, I believe that the Petition is properly filed and that the Petitioners have the proper "standing" to bring this issue before me.

2) Is consideration of this case precluded by the findings of fact and conclusions of law authored by me in Development Plan Case No. VII-278, regarding the proposed Shelley Retail Center for the subject tract?

This issue was highly debated by the participants and is a significant consideration in the discussion of this case. As was made clear above, development of the subject tract proceeded through the development plan approval process, including the Hearing Officer's Hearing, at which significant testimony and evidence was offered relating to the storm water management issue. No appeal was taken from my Order dated January 7, 1994 and thus, the development plan approval by this Hearing Officer is final. Therefore, the significant question must be addressed as to whether the issue presented within the Petition is precluded by res judicata or collateral estoppel.

Res judicata and collateral estoppel are two doctrines which are often quoted by litigants and addressed by the Courts of this state. However, irrespective of the frequency in which they are raised, they are misunderstood and misapplied. Both deal with the common law rule that precludes relitigation of issues and provides for a finality of judgment. The courts have long recognized the principle that litigation must terminate at some point. Litigants should not be able to seek redress ad nauseam. Although collateral estoppel and res judicata both further this stated precept, they are different concepts. In Mackall v. Zayer Corp., 293 Md. 221, 443 A2d 98 (1982), the Court recognized the distinction between res judicata and collateral estoppel when it noted "if a proceeding between parties involves the same cause of action as a previous proceeding between the same parties, the principle of res judicata applies and all

matters actually litigated, or that could have been litigated, are conclusive in the subsequent proceeding. If a proceeding between parties does not involve the same cause of action as a previous proceeding between the same parties, the principle of collateral estoppel applies and only those facts or issues actually litigated in the previous action are conclusive in the subsequent proceeding", at page 228 (citations omitted). Thus, both doctrines relate to subsequent proceedings between the same parties. However, res judicata applies when the same cause of action which existed in a previous proceeding exists in the subsequent proceeding. In such a case, all matters actually litigated, or those that could have been litigated, are conclusive in the subsequent proceeding. Collateral estoppel on the other hand, relates to a different cause of action between the same parties. In such a situation, only those facts or issues actually litigated in the previous action are conclusive. To emphasize, two distinctions exist between these doctrines; res judicata is applied only in the same cause of action whereas collateral estoppel is not, and issues that could have been litigated are conclusively resolved in res judicata whereas, in collateral estoppel, only those issues actually litigated are resolved.

This distinction was further emphasized in Harbin v. H.E.W.S., Inc., at 56 Md. App, 72, 466 A2d 879 (1983). Therein, the Court noted "a threshold requirement for both doctrines is that the second action must be between the same parties or their privies. Res judicata applies where the two causes of action are the same. Collateral estoppel applies only to the factual issues actually determined in the first action", at page 884.

Which of these doctrines applies in this case? In answering this question, it is first noted that both the development plan hearing and the zoning hearing involve the same parties. Mr. Shelley and his corporation

were parties in the original development plan case and are parties in the instant case, as were Dr. McQuaid and the community association. Cold Bottom Farms, Inc. is contractually privy to the matter by way of the easement agreement with Mr. Shelley's corporation.

Having determined that the parties are the same, it must then be asked: Is the cause of action presented in the instant case the same as that presented in the development plan case? The answer to this question must clearly be in the negative. Although the term "cause of action" is not a defined term in the Maryland Rules of Procedure, a definition of that phrase has been developed within the case law. Essentially, a "cause of action" is that bundle of rights by which the plaintiff, counter-plaintiff, or moving party, seeks relief against another. Causes of action may obviously be in tort, contract, or under other theories. Although helpful, the label under which a cause of action is brought, e.g. (breach of contract) is not always determinative in identifying if a second litigation encompasses a different cause of action. Rather, the test which has been developed is if the same evidence which would maintain the first action is sufficient to sustain a second action. That is, if the same evidence would be offered in both actions, then the causes of action are the same. See Wool v. Maryland National Capital Park and Planning Commission, 664 F Supp., 224 (1987), Kutzik v. Young, 730 F2d, 149 (1984), and Whitaker v. Whitaker, 484 A2d, 314 60 Md. App. 695 (1984).

In examining the issues presented in the development case and special hearing case, it is apparent that the causes of action are not the same. The cause of action in the development plan case was whether the subject development plan met all County development regulations and satisfied all County and community issues and comments. The evidence offered

in that case related to development plan issues. The issue in the instant case, is quite distinct; whether the relevant provisions of the B.C.Z.R. would permit the storm drainage easement to be located on the R.C. 5 zoned property. The evidence which need be offered and, in fact, was offered, to sustain the first cause of action and obtain approval of the development plan, is different from that necessary to resolve the issue presented in the instant zoning case. Thus, the causes of action are clearly not the same. In that the causes of action are not the same, res judicata does not apply. Thus, Mr. Shelley cannot seek the protection afforded a litigant by the res judicata doctrine and it cannot be held that the zoning issue should or could have been litigated in the previous case. Indeed, this issue was not previously addressed and whether it should have or could have been litigated makes no difference.

Thus, these cases turn on collateral estoppel. In Batson v. Shiflett, 325 Md. 684, 602 A2d 1191 (1992), the Court of Appeals identified those standards which must be considered in determining whether collateral estoppel is applicable. Noted the Court, collateral estoppel should be applied to litigation before a judicial administrative body and subsequent litigation precluded when three factors are present; namely, when the agency was acting in a judicial capacity, when the issue presented was actually litigated in the prior case, and whether the resolution was necessary to the prior disposition. In this case, the issue raised in the zoning case was never actually litigated in the prior case. Moreover, quite obviously, a determination of this issue was not necessary to the prior disposition (i.e., approval of the development plan). For these obvious reasons, collateral estoppel is not applicable and thus, this case is properly before me now.

3) Is the storm water outfall drain proposed for the Cold Bottom Farm property a use of land permitted in the R.C. 5 zone.?

Indeed, this question is the crux of this case. Moreover, in considering this issue, both sides have referenced the decision authored by me in Case No. 93-93-SPH brought by the Long Green Valley Association regarding the Long Green Hotel in Kingsville. The cases do present similar factual scenarios.

In Long Green, the Petitioner owned a lot on Long Green Pike which had been zoned with a business use classification. Resource Conservation (R.C.) zones were located on land adjacent thereto, as is the case with the Shelley property. In Long Green, the owner of the property proposed a commercial enterprise on the business zoned tract. However, because the septic system attendant thereto could not be located on the property, the owner acquired the necessary easement to locate the septic system on his neighbor's R.C. zoned land. The local community association took issue with the legality of such an arrangement. In that case, I held that the septic system was, indeed, a use of land. I cited the definition of the term "use" in Webster's Third New International Dictionary wherein that term is defined as "The legal enjoyment of property that consists in its employment, occupation, exercise or practice" and "the benefit in law of one or more persons, specifically, the benefit or the profit arising from lands and tenements to which legal title is held by a person, or the act or practice of using something." Moreover, I noted that the term "use" is not defined in Section 101 of the B.C.Z.R. For reasons fully stated therein, I held that the septic system constituted a use of the neighboring R.C. 2 land.

Having made that decision, I then went on to state that the B.C.Z.R. are written in the inclusive; that is, only uses permitted as of right, or by special exception, are allowed. I referenced Section 102.1 of the B.C.Z.R. as authority for that position, as well as the holding of Kowalski v. Lamar, 25 Md. App. 493, 334 A2d 536 (1975). In that case, the court comprehensively discussed the B.C.Z.R. and noted that "any use other than those permitted and being carried on as of right or by special exception is prohibited." Kowalski, page 539.

Further on in the opinion, I concluded that the septic system could not be considered as an accessory use to the commercial property. I referenced the definition of accessory uses in Section 101 of the B.C.Z.R., which requires that such accessory uses be located on the same lot as the principal use or structure served. I also incorporated the holding in a decision rendered by me entitled Helix Health System, Case No. 92-186-SPH, which comprehensively discussed the requirements for an accessory use. Indeed, my holding in that case as to the accessory use definition would be applicable here; clearly, the storm water outfall on the Cold Bottom Road property cannot, by definition, be accessory to the development of the Shelley Retail Center on the property owned by Maryland Line Property, Inc.

In determining whether the storm drain outfall is a use and whether it is permitted in the R.C. 5 zone, consideration must be given to the precise activity which encompasses the "use". Unfortunately, however, at the public hearing held in this matter, the testimony and evidence offered was less than definitive as to the actual operation of the storm water management outfall. Counsel for Mr. Shelley indicated that the plans had not yet been finalized for this operation.

Three alternate scenarios, however, were laid out. The first would be a simple discharge of water from the Shelley property onto Cold Bottom Road at the property line. Under this scenario, storm water would be collected from the Shelley property and discharged on the property line to flow onto the Cold Bottom Farm site. The installation of level spreaders, to disperse and regulate the flow, might be employed. In such a scenario, it does not seem that such a utilization of the R.C. 5 land would constitute a use thereof. Clearly, such utilization would be of a passive nature rather than an active nature. Unlike the Long Green case, with the installation of equipment underground, the mere flow of water onto and across the land is not the use of that property. The case law is replete with discussions regarding riparian rights and it is well-settled that one downstream may not block or divert the natural flow of water to adversely affect upstream owners. In my view, the collection of water on the Shelley property and the mere discharge of same at the property line onto the Cold Bottom Farm property would not be considered a use of the Cold Bottom Farm tract. All of the cases cited within the body of my Long Green opinion related to a more active utilization of property.

A second possible scenario would be the construction of an above-ground culvert across the Cold Bottom Farm property. Is this a use of land? The answer here must be "it depends". A more definitive answer cannot be given without further knowledge by this Zoning Commissioner as to the specifics of such an outfall system. As noted above, there was no testimony and evidence offered at the hearing before me as to these specifics. Without knowing the details of such a system, it cannot be definitively stated if such would be a use of land. The development of a sophisticated series of above-ground pipes, culverts, and/or canals might well

be considered a use of land. On the other hand, regrading of the land to create a natural culvert may not be a use. The record here is insufficient to fully answer this question.

The third alternative relates to the underground piping of storm water. In fact, subsequent to the hearing, a letter was received from the Petitioners' counsel reflecting a meeting by and between Dr. McQuaid and J. James Dieter, the Director of the Department of Environmental Protection and Resource Management (DEPRM). The introduction of this letter has not been objected to by Mr. Shelley's Counsel and thus, will be included in the case file. Mr. Dieter's letter indicates that, in fact, the exact design of the proposed system for this site has been finalized. What is proposed is a buried pipe which will extend under the surface of the Cold Bottom Farm tract from the Shelley Retail Center property to an ultimate discharge point, adjacent to I-83. Is such a system an identifiable use under the B.C.Z.R.? The answer here must be in the affirmative. The installation of an underground pipe is clearly more "active" than the mere discharge of water in the fashion described in the first scenario listed above. Is such a use permitted in the R.C. 5 zone? Likewise, this question must be answered in the affirmative. As noted above, both the B.C.Z.R. and the case law (Kowalski, infra) provide that only those uses permitted by special exception are permitted by the B.C.Z.R. Section 1A04.2.A of the B.C.Z.R. lists uses permitted as of right in the R.C. 5 zone. Under subsection (9) thereof, a number of uses are defined. They include "telephone, telegraph, electric power, or other similar lines or cables -- all underground; underground gas, water or sewer mains or storm drains; other underground conduits, except underground interstate and intercontinental pipe lines." (emphasis added)

Center, and as such, the Petition for Special Hearing has been granted in part and denied in part. Specifically, the Petition is denied in that the utilization of an R.C. 5 easement on the Cold Bottom Farms tract to accept the aboveground discharge of water from the Shelley property via an underground pipe is a permitted use of land; and, the Petition is granted for additional consideration to be given, if necessary, as to an above-ground culvert or discharge system. The relief granted here is subject to the following restriction:

1) The Petitioners are hereby made aware that a 30-day appeal period from the date of this Order is in effect. Should an appeal of the decision in this matter be filed and this Order reversed, the relief granted herein shall be rescinded.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

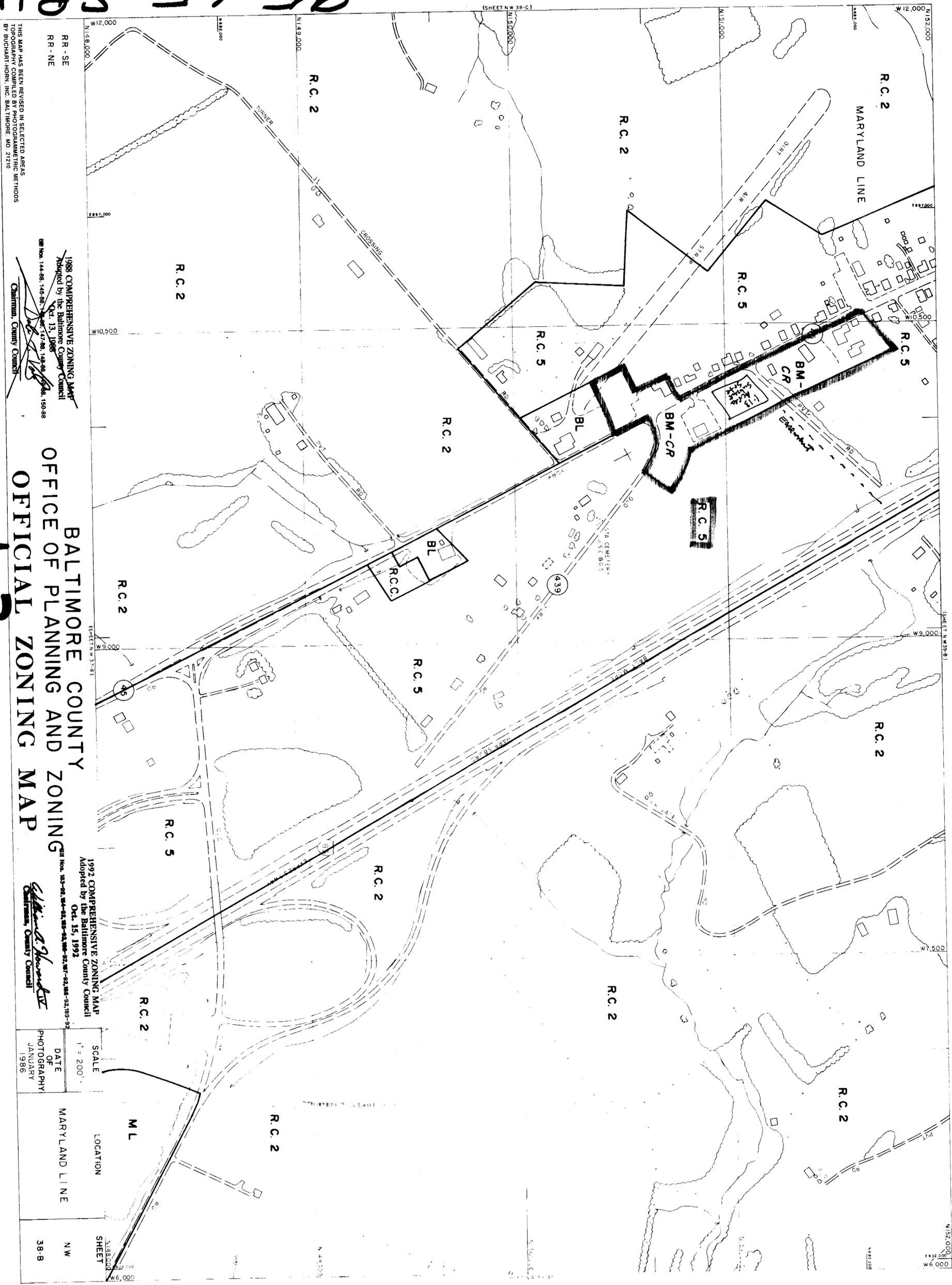
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NOLAN, PLUMBER

Much discussion was presented in the Long Green case about the term "sewer mains", and whether same applied to public facilities, only, or both public and private facilities. A similar discussion might be made as to storm drains and whether the Council intended public or private storm drains to be permitted. However, the question is academic, based upon language elsewhere within the statute. Specifically, "other underground conduits, except underground interstate and intercontinental pipelines" are permitted uses as of right in an R.C. 5 zone pursuant to Section 1A04.2.A.9. Webster's Third New International Dictionary defines conduit as "a natural or artificial channel through which water or other fluid passes or is conveyed." This definition clearly encompasses the use described in Mr. Dieter's letter. The storm water management outfall system to be contained within the easement purchased by Mr. Shelley on the adjoining property is an underground conduit. Moreover, all underground conduits are permitted under the statute, except international and intercontinental pipelines. Thus, based on the plain meaning of these words, the installation of an underground storm water management system as described in Mr. Dieter's letter would be a permitted use as of right.

Pursuant to the advertising, posting of the property, and public hearing on this Petition held, and for the reasons set forth herein, the relief requested in the Petition for Special Hearing is denied in part and granted in part.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 27th day of October, 1994 that the property at 1033 Cold Bottom Road, zoned R.C. 5 and owned by Cold Bottom Farms, Inc., can be used for a 10-foot non-exclusive drainage easement for the property located adjacent thereto at 21405-415 York Road, known as the Shelley Retail

95-65-5 F



RR - SE
RR - NE

1988 COMPREHENSIVE ZONING MAP
 Adopted by the Baltimore County Council
 Oct. 13, 1988
 Bill Nos. 144-88, 145-88, 147-88, 148-88, 150-88
 Chairman, County Council

BALTIMORE COUNTY
 OFFICE OF PLANNING AND ZONING
 OFFICIAL ZONING MAP

1992 COMPREHENSIVE ZONING MAP
 Adopted by the Baltimore County Council
 Oct. 15, 1992
 Bill Nos. 153-92, 154-92, 155-92, 156-92, 157-92, 158-92, 159-92
 Chairman, County Council

SCALE	1" = 200'
DATE OF PHOTOGRAPHY	JANUARY 1986
LOCATION	MARYLAND LINE
SHEET	NW 38-B

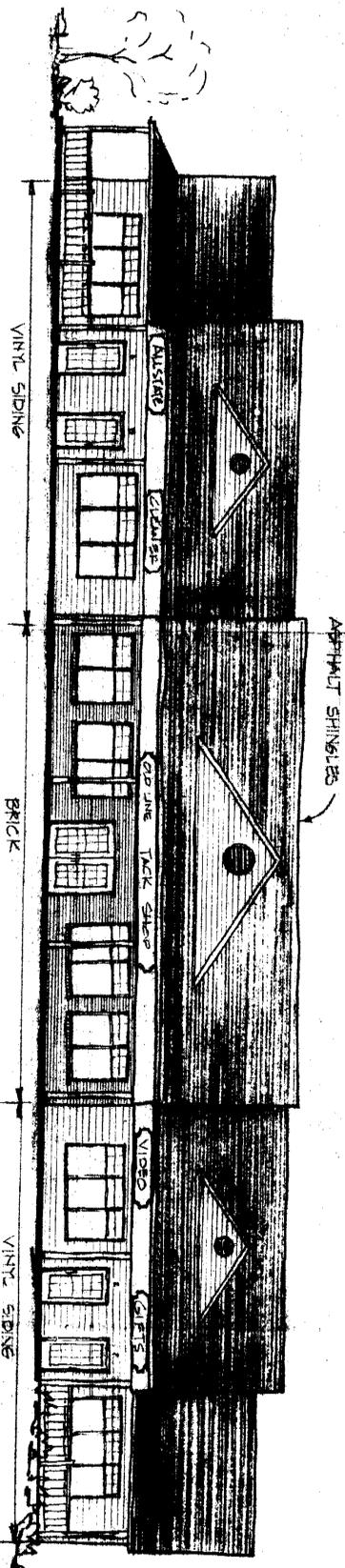
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THIS MAP HAS BEEN REVISED IN SELECTED AREAS TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

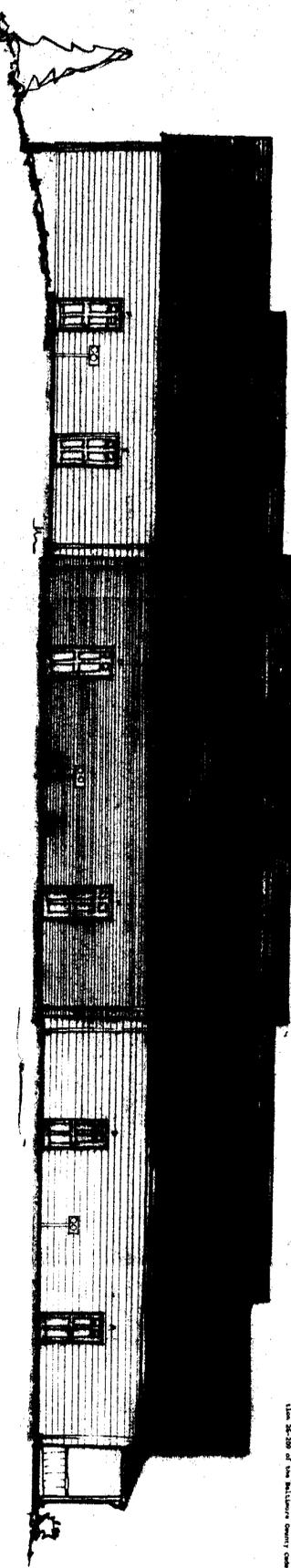
(SHEET NW 38-C)

(SHEET NW 38-B)

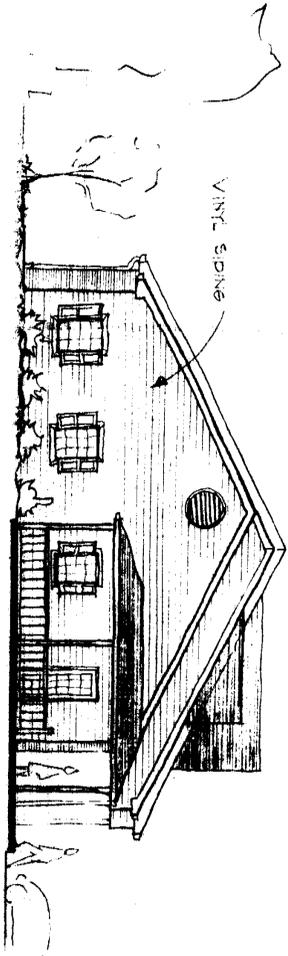
PROPOSED SHELLY RETAIL CENTER
 HARTLAND LINE, MA



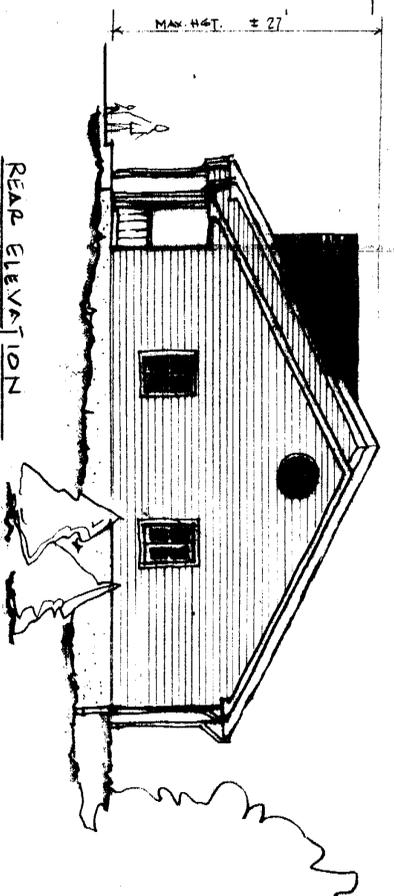
SIDE (SOUTH) ELEVATION 1/8"=1'-0"



SIDE (NORTH) ELEVATION 1/8"=1'-0"



FRONT (WEST) ELEVATION



REAR ELEVATION

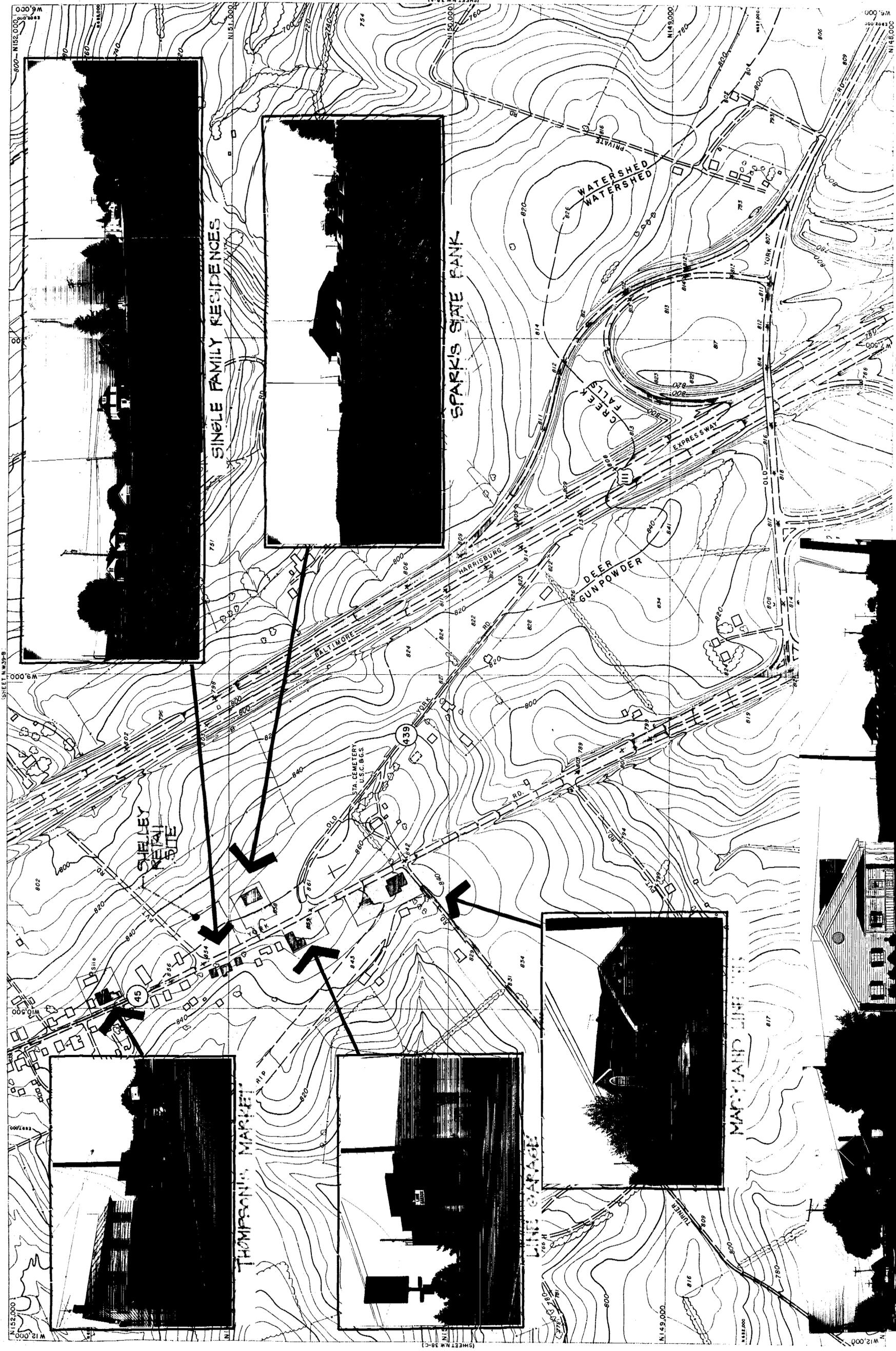
Shelley, pursuant to the zoning and development plan regulations of Middlesex County as contained within the S.C.D.A. and Section 24 of the Middlesex County Code, the siting of the proposed and public hearing held thereon, the development plan shall be approved consistent with the commonwealth's policies and the restrictions set forth herein.

WHEREAS, it is deemed by the Planning Board, Commission and Planning Officer for Middlesex County that the proposed development and the development plan for Shelly Retail Center, located within the developer's parcel No. 10 and is hereby APPROVED, subject to the following REVISIONS:

- 1) The proposed site shall be located within the boundaries of the parcel No. 10.
- 2) In accordance with the development plan, the construction of the proposed development shall be completed within the period of time specified in the development plan. The developer shall be responsible for the construction of the proposed development and shall be held liable for any delay in the completion of the development.
- 3) An eight meter set-back shall be provided on the subject site.

Any appeal of this decision shall be taken in accordance with Section 24C:20B of the Middlesex County Code.

James J. McLaughlin
 Planning Officer
 Middlesex County
 100 State Street
 Lowell, MA 01854



LOCATION
 MARYLAND LINE NW
 RECEIVED
 JUL 27 1961
 OFFICE OF
 PLANNING & ZONING

REVISIONS BY DATE SCALE 1" = 200'
 PETITIONER'S
 LAND EXHIBIT 2
 DATE OF PHOTOGRAPHY APRIL 1961
 Topography Compiled by Photogrammetric Methods
 MAPS, INCORPORATED - BALTIMORE 22, MARYLAND

SHEET NW 35-B

SHEET NW 35-B

SHEET NW 35-B

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